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SUPREME COURT OF THE UNITED STATES
October Term, 1993
No.

Supreme Court, U.S.
FILED

Myong Magnuson, d/b/a
Yoshiko's Sauna,

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Petitioner,

vs.

City of Minneapolis,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF MINNESOTA

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36 pp

Questions Presented

1. May the City of Minneapolis, consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, deprive Petitioner of all use of her property for up to one year, on the basis of the results of criminal proceedings in which she had no opportunity to participate or be heard?

2. May the City of Minneapolis, consistent with the Due Process Clause of the Fourteenth Amendment and the freedom of association provision of the First Amendment to the United States Constitution, deprive Petitioner of all use of her property for a period of one year, on the basis of criminal conduct of third parties, in the absence of any showing that Defendant either knew of such conduct or specifically intended to further such unlawful conduct?

Parties and Proceedings Below

The parties to the proceedings below were the City of Minneapolis, Plaintiff: Helen Fisher and Un Sil Olson (Defendants), who were the landlords of the subject premises as tenants-in-common; Petitioner Myong Magnuson, and Suzy Kotts, a tenant of Defendant Olson. On Appeal, the Attorney General of the State of Minnesota intervened to defend the constitutionality of the statute under challenge.

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Opinions Below

Review is sought of the decision of the Minnesota Supreme Court, entered September 30, 1993, denying Petitioner's Petition for Review. The decision is unreported and is set forth in the Appendix at A.202. The Minnesota Supreme Court refused to grant review of the decision of the Minnesota Court of Appeals in City of Minneapolis v. Fisher, 504 N.W. 2d 520 (Minn. App. 1993).

Jurisdiction

Review is sought of the decision of the Minnesota Supreme Court entered September 30, 1993. Jurisdiction is based upon Title 28 U.S.C. Section 1257(a).

Constitutional and Statutory Provisions Involved

This case involves the First and Fourteenth Amendments to the United States Constitution, Minnesota Statutes Section 617.80-617.87, the texts of which are set forth in the Appendix at A.206 - A.211.

Statement of the Case

In this action, Respondent sought and obtained a temporary injunction and a permanent abatement of an alleged nuisance, occurring at Yoshiko's Sauna, 117 North Washington, Minneapolis, Minnesota,

pursuant to the provisions of Minnesota Statutes Sections 617.80-617.87.[1]

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The statute provides, in pertinent part,:

"617.80. **Definitions**

Subdivision 1. **Generally**. The definitions in this section apply to Sections 617.80 to 617.87.

Subd. 2. **Building**. 'Building' means the structure suitable for human shelter, a commercial structure that is maintained for business activities but involve human occupation or any portion of such structures.

Subd. 3. Movable property. 'Movable property' means furniture and fixtures.

Subd. 4. Prostitution. 'Prostitution' or 'prostitution related offenses' means the conduct defined in Sections 609.321 to 609.324. ***

Subd. 6. Disorderly House. 'Disorderly house' has the meaning assigned to it in Section 609.33.

Subd. 7. Owner. 'Owner' for purposes of Sections 617.80 to 617.87 means the person in whose name the building or affected portion is recorded with the county auditor for taxation purposes.

Subd. 8. Interested Party. 'Interested party' for the purposes of Sections 617.80 to 617.87 means any lessee, tenant, or occupant of a building or affected portion of a building and any known agent of an owner, lessee, tenant, or occupant.

617.81. Nuisance; acts constituting; injunction; notice.

Subdivision 1. Injunction. In order to maintain a temporary injunction under Section 617.82 or a permanent injunction or order of abatement under Section 617.83 the provisions of 617.80 to 617.87 must be followed.

Subdivision 2. Acts constituting a nuisance. For purposes of Sections 617.80 to 617.87 a public nuisance exists upon proof of three or more misdemeanor convictions or two or more convictions, of which at least one is a gross misdemeanor or felony, within the previous two years for:

(1) acts of prostitution or prostitution-related offenses committed within the building;* * *

Subdivision 3. Notice. Notice of a conviction described in Subdivision 2 must be mailed by the Court Administrator to the owner of the building where the offense was committed and all other interested parties and must filed with the County Recorder's office. This notice is considered sufficient to inform all interested parties that the building or portion of it is being used for purposes constituting a public nuisance.

617.82. Temporary Order.

Whenever a city attorney, county attorney, or the attorney general has cause to believe that a nuisance described in Section 617.81 Subdivision 2, exists within the jurisdiction the attorney serves, that attorney may by verified petition seek a temporary injunction in district court in the county in which the alleged public nuisance exists. No temporary injunction may be issued without a prior show cause notice of hearing to the respondents named in the petition and an opportunity for respondents to be heard. Upon proof of a nuisance described in Section 617.81 Subdivision 2 the court shall issue a temporary injunction. Any temporary injunction issued must describe the conduct to be enjoined.

617.83. Injunction; order of abatement.

Upon proof of a nuisance described in Section 617.81, Subdivision 2, the court shall issue a permanent injunction and enter an order of abatement. The permanent injunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of building or a portion of it for one year except as otherwise provided in Section 617.84 or 617.85, unless sooner released pursuant to Section 617.87. Before an abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under Section 617.85 in the same manner that a summons is served under the Rules of Civil Procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or the affected portion.

617.84. Movable property.

The order of abatement may direct the removal of movable property used in conducting or maintaining the nuisance and direct the sale of property belonging to respondent who was notified or appeared. The sale shall be conducted pursuant to the provisions of Chapter 550 on the sale of property on execution. A person appointed by the court as a receiver of the building may use a building or portion of it which is the subject of an abatement order in a manner approved by the court. Cost of the sale on execution, moving and storage fees, and any receivership must be paid out of the proceeds of the sale of movable property or any rents collected during the receivership. The balance from the sale of movable property must be paid to the owner of the property. The balance of any rents collected during any receivership shall be paid to the treasury or unit of government which brought the abatement action.

617.85. Nuisance; motion to cancel lease.

Where an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of

a commercial or residential tenant or lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding, may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. In addition to the grounds provided in Chapter 566, the maintaining or conducting a nuisance as defined in Section 617.81, Subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease for restitution of the premises. It is no defense to a motion under this section by the owner that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the grounds provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building under control of the tenant or lessee, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(a) Upon motion of the building owner cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and

(b) Further finds that the acts constituting the nuisance as defined in Section 617.81, Subdivision 2 were committed in a portion of the building under the control of the tenant or lessee whose lease or tenancy has been canceled pursuant to this section.

617.86. Contempt.

Whoever violates a temporary injunction, permanent injunction, or abatement order granted under Sections 617.80 to 617.87 may be adjudged in contempt of court.

617.87. Release of Property.

If, after an order of abatement has been entered, the owner appears and pays the cost of the action and files a bond in an amount determined by the court, but not to exceed $50,000, conditioned that the owner will immediately abate the nuisance for a period of one year, the court may, if satisfied of the owner's good faith, order release of the building or portion of it which is subject to the order of abatement. If the premises are released, for each day of the term of the bond that the owner knowingly permits any part of the premises to be used for any activity which was the basis of the abatement order, the owner shall forfeit $1,000 under the bond. Forfeiture under the bond does not relieve the owner from prosecution for contempt. Release of the property pursuant to this section does not release it from an injunction issued under Section 617.83 or any other judgment, penalty, lien or liability to which it may

The complaint in the instant case alleged that one gross misdemeanor and one misdemeanor prostitution conviction out of conduct arising on the subject premises had occurred in the two years preceding the commencement of the action (Appendix at A.4 - A.5). Subsequent to the commencement of the action, there were two additional misdemeanor prostitution convictions arising out the subject premises.[2] There is no allegation that Petitioner Magnuson was a party to any of those criminal prosecutions, or had any opportunity to participate.[3] Nonetheless, those convictions, as against Petitioner, are conclusive evidence of the existence of a public nuisance on the premises.

By the plain language of Minnesota Statutes Section 617.82, upon proof of the criminal convictions to a district court, the court is mandated to issue a temporary injunction. Under Section 617.83, the

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be subject by law."

[2]See Findings No. 6 of the district court's order of February 24, 1993, set forth in the Appendix at A.170 - A.172.

[3]See district court findings, paragraph 6, Appendix at A.170 - A.172, indicating the Defendants convicted were Suzy W. Kotts, convicted March 27, 1991; Lola Jen Stenadore, a/k/a Ekoena, convicted September 19, 1991; Kathie Lee Mos, convicted May 7, 1992; and Frances Tamel Brown, convicted September 24, 1992.

court is not only mandated to issue a permanent injunction, but also an order of abatement, which "must direct the closing of the building or a portion of it for one year...(emphasis supplied)"

As a result, solely on the basis of criminal convictions for conduct which Petitioner may not have known about or authorized, and taking place in criminal proceedings in which Petitioner had no opportunity to be heard or participate, Minnesota courts are mandated to close Petitioner's building for all purposes, for up to one year. The only way a building owner can secure the use of the building for any purpose is to post a substantial bond, up to $50,000.00, subject to $1,000.00 per day forfeiture and contempt proceedings, if any act of prostitution were to take place on the premises.

Even this relief is by no means guaranteed, and is entirely discretionary with the state court. See Minnesota Statutes Section 617.87, which provides, in pertinent part, that "the court may, if satisfied of the owner's good faith (emphasis supplied)," release the building subject to the bond and penalty requirements.

By motion, dated June 15, 1992, a copy of which is set forth in the Appendix at A.74 - A.77, Petitioner moved to dismiss the complaint on the ground that the statutes set forth, supra, were facially

unconstitutional, and unconstitutional as applied. Petitioner's constitutional challenges were rejected by both the District Court (Appellant's Appendix at A.174), and the Minnesota Court of Appeals on appeal. See 504 N.W. 2d at 525-526.

The record in the instant case reflects that the subject premises are owned by co-Defendants Fisher and Olson as tenants in common, each one having a one-half interest in the premises (Appendix at A.169. On August 18, 1988, Petitioner entered into a written lease agreement with Helen Fisher to lease Defendant Fisher's half interest in the premises, and to occupy the subject premises on alternating days.[4] On alternative days, the premises were occupied by one Kyong Ye Firnstahl, pursuant to a separate lease with Defendant Un Sil Olson, then known as Un Sil Berg (Appendix at A. 32). On October 13, 1988, Petitioner entered into an agreement with Defendant Helen Fisher to purchase her one-half interest in the Yoshiko's Sauna business, the purchase to take affect on July 1, 1989, following termination of the

[4]A copy of the lease agreement is set forth in the Appendix at A.29- A.32.

Olson lease to Kyong Ye Firnstahl.[5]

In August, 1990, co-defendant Olson, the owner of the other one-half interest in Yoshiko's Sauna, attempted to assert the right to occupy the premises one-half time, as had been the prior arrangement with Ms. Firnstahl. However, her intent was not to operate the business herself, but rather lease the premises one-half time to co-defendant Suzy Woo Kotts (Petitioner's Appendix at A.84).

Petitioner strenuously objected to this arrangement, and had her attorney write a letter to Ms. Olson, a copy of which is set forth in the Appendix at A.89 - A.9l, dated August 7, 1990, objecting to the proposed lease to Kotts, and asserting that in that Ms. Fisher was a partner of Ms. Olson and that Petitioner had purchased the interest of Ms. Fisher, Ms. Olson could not, under the Uniform Partnership Act, assign her interest in partnership property to Kotts, without Petitioner's consent.

On August 21, 1990, Olson's then attorney, Hosmer A. Brown, wrote to Petitioner's attorney, denying the existence of a partnership, and continuing to assert Olson's right to enter the business and occupy it on

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[5]A copy of the purchase agreement is set forth in Appendix at A.33 - A.44. As a result, between July l, l989, when the Firnstahl lease was terminated until August, l990, Petitioner was the exclusive tenant of Yoshiko's Sauna (Appendix at A.83.)

alternating days.[6]

In response, Petitioner's attorney wrote a letter back to Mr. Brown, continuing to assert Petitioner's right not to have the other half interest in the premises leased out. Petitioner was particularly concerned that Kotts, Ms. Olson's prospective tenant, was a person known to have been repeatedly convicted of prostitution. Petitioner's attorney specifically wrote:

> "[Y]our client's prospective tenant is an individual who has been convicted on at least three occasions of prostitution. Under the provisions of Minnesota Statutes Section 617.80-617.87, should three convictions for misdemeanor prostitution or two convictions for gross misdemeanor prostitution occur within a two-year period, the premises may be closed for all purposes for up to one year, and the personal property therein sold. My client therefore believes that your client's prospective tenant jeopardizes my client's interest in the property." Appendix at A.96.

After both litigation and physical violence were threatened by both sides, Petitioner reluctantly agreed not to attempt to litigate her continued right to occupy the subject premises conclusively, and consented to allow Ms. Olson to lease the subject property to Kotts, with Kotts and Petitioner operating the subject premises on alternate days, in

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[6]A copy of said letter is set forth in Petitioner's Appendix at A.92 - A.93.

exactly the same arrangement that Petitioner had previously had with Ms. Firnstahl (Appendix at A.85 - A.86). Thus, pursuant to her lease with Fisher, Petitioner Magnuson operated Yoshiko's Sauna on Wednesdays, Thursdays, Saturdays, and alternating Sundays, while Suzy Woo Kotts operated the premises, pursuant to her separate lease with Olson, on Mondays, Tuesdays, Fridays, and alternating Sundays (Appendix at A. 86).

Both of the initial convictions which gave rise to Respondent's complaint occurred while Suzy Woo Kotts, not Petitioner, was in exclusive control of the subject premises. The first conviction, a gross misdemeanor prostitution conviction, was of Suzy Woo Kotts herself, obviously, at a time that Petitioner was not in control of the subject premises. Likewise, Lola Jen Ekovena, the second conviction, was arrested on June 4, 1991, on a Tuesday, which was also a day in which Defendant Kotts was in control of the premises. See Appendix at A.5. Finally, the third conviction, that of Kathie Moos, resulted from an arrest on December 10, 1991, also a Tuesday, a day in which the premises were under the control of Kotts. Appendix at A.171.

When Petitioner attempted to confront Suzy Kotts over the fact that she was permitting prostitution to take place on the premises and

failing to pay her share of the bills on the premises, Kotts responded by claiming harassment on the part of Petitioner and obtaining an ex parte temporary restraining order on February 11, 1992.[7] Those proceedings resulted in the issuance of a mutual restraining order by the Hennepin County District Court on March 12, 1992, a copy of which is set forth in the Appendix at A.103 - A.108.

Given the fact that three of the four convictions giving rise to the claim of nuisance occurred during the tenancy of Kotts, Defendants Fisher and Olson, upon the initiation of proceedings by Respondent moved promptly for an order, pursuant to Minn. Stat. § 617.85, to terminate the Kotts tenancy.[8] Although this relief was requested in June, 1992, it was not granted by the District Court until October 28, 1992.[9] Despite the fact that the tenant whose tenancy gave rise to the nuisance had been evicted from the premises, the District Court issued a permanent injunction and order of abatement on February 24, 1993.

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[7]A copy of the order and the affidavit in support thereof are set forth in Petitioner's Appendix at A.98 - A.102.

[8]See Petitioner's Appendix at A.109 - A.112.

[9]See the District Court's order of October 28, 1992, set forth in Petitioner's Appendix at A.164 - A.167.

The order was affirmed by the Minnesota Court of Appeals on August 10, 1993. See City of Minneapolis v. Fisher, supra, 504 N.W. 2d 520 (Minn. App. 1993). On September 30, 1993, the Minnesota Supreme Court denied further review. Appendix at A.202.

Petitioner now seeks a Writ of Certiorari.

ARGUMENT

I. THE DECISION OF THE MINNESOTA SUPREME COURT UPHOLDING THE CONSTITUTIONALITY OF MINNESOTA STATUTES SECTION 617.81-617.87, PERMITTING THE CLOSING OF PETITIONER'S PREMISES, AS A RESULT OF CRIMINAL PROCEEDINGS TO WHICH SHE WAS NOT A PARTY AND AT WHICH SHE HAD NO OPPORTUNITY TO BE HEARD IS IN CONFLICT WITH THE DECISIONS OF THIS COURT, REQUIRING REVIEW UNDER RULE 10(b) OF THIS COURT.

As has already been noted, supra, Minnesota Statutes Sections 617.81, Subd. 2(1), when taken in conjunction with Sections 617.82, 617.83, and 617.85, makes three misdemeanor prostitution convictions or two prostitution convictions of which one is a misdemeanor or felony within two years conclusive evidence that Petitioner's premises are a public nuisance, and mandate the closure thereof for one year and the seizure of personal property, despite the fact that Petitioner was not a party to any of the criminal proceedings which gave rise to the convictions, and despite the fact that Petitioner had no control over

those proceedings whatsoever, including no opportunity to be heard therein. Thus, Petitioner in the instant case was absolutely barred from contesting that acts of prostitution took place on her premises, as a result of criminal convictions of alleged prostitutes, resulting from proceedings in which she was not a party, not privy to any of the parties, over which she exercised no control, and at which Defendants had no opportunity to be heard. It is absolutely clear that such a law violates basic due process guarantees of the Fourteenth Amendment to the United States Constitution.

Directly on point in this regard is the decision of this Court in McKinney v. Alabama, 424 U.S. 669, (1976). In that case, the Court, by Justice Rehnquist, invalidated an Alabama statute which made it a criminal offense to sell a magazine which had previously been judicially found obscene. In that case, a civil action was brought in Mobile County, Alabama, adjudicating four magazines to be obscene. Twelve days after the adjudication, one of the magazines was purchased from the Defendant in Birmingham, Alabama, a different county. Defendant in the Birmingham action had not been a party to the prior action in Mobile County, was not a privy to any party in that action, and had no control over the litigation in Mobile County. Nonetheless, because the

statute prohibited the sale of magazines which had judicially been determined to be obscene, the trial court in Alabama Supreme Court held that he was barred from contesting the obscenity vel non of the magazine in question, and was bound by the results of the prior Mobile County litigation, to which he was not a party. This Court held that such a procedure clearly violated the Defendant's due process rights. In declaring the statute unconstitutional, this Court stated:

> "It is not altogether clear from this record precisely what transpired at the hearing in which New Directions [the allegedly obscene magazine in question] was declared obscene. It does appear that there were in addition to the several magazines named as 'respondents' in the proceeding (footnote omitted), an individual and corporate respondent: Chris Zarocastas, individually and d/b/a Nelson's Newsstand [and] Nelson's News Stand, Inc., a corporation, d/b/a Nelson's News Stand.' The state contends that the existence (footnote omitted) of these parties provides sufficient adverseness in the proceedings to permit its use of the adjudication thus obtained to bind nonparties such as Petitioner.
>
> Our difficulty with this argument is its assumption that the named parties' interest are sufficiently identical to those of Petitioner that they will adequately protect his First Amendment rights. There is no indication that they are privity with him, as that term is used in determining the binding effect of judgments. [Citations omitted]... Such parties may, of course, make their own determination whether and how vigorously to assert their own First Amendment rights. The Constitution obviously cannot force anyone to exercise the freedom of expression which it guarantees. Those who are accorded

> an opportunity to be heard in a judicial proceeding established for determining the extent of their rights are properly bound by its outcome, either because they chose not to contest the state's claim or because they chose to do so and lost.
>
> But it does not follow that a decision reached in such proceedings should conclusively determine the First Amendment rights of others. Nonparties like Petitioner may assess quite differently the strength of their constitutional views regarding the desirability of disseminating particular materials. We think they must be given the opportunity to make these assessments themselves, as well as the chance to litigate the issues as they so choose." 424 U.S. at 675-676.

Although McKinney v. Alabama, dealt with a First Amendment, as well as a Fourteenth Amendment question, numerous courts which have considered the issue both before and after McKinney have clearly held the principle to apply in non-First Amendment contexts. For example, in United States v. Thoresen, 428 F. 2d 654 (9th Cir. 1970), the court considered a criminal case in which charges were brought against both a husband and wife. Initially, all counts were dismissed against the wife, and the husband later brought various motions to suppress evidence, which were denied. The indictment was later dismissed against the husband as well. Both Defendants were subsequently reindicted, and both Defendants again moved for suppression of the evidence. The court held both the husband and wife to be bound by the adverse

decision on the husband's prior suppression motion, despite the fact that the wife had not been a party to that proceeding. On appeal the court it to be denial of due process to refuse to allow the wife to be heard on suppression motions, as the result of proceedings to which she was not a party. The court stated:

> "Absent some showing that Mrs. Thoresen stipulated to, or acquiesced in, the trial court's reliance on the transcript of the first suppression hearing, in which she was not a party, we do not believe she can be denied a complete hearing on all search and seizure problems which bear upon her conviction." Id. at 667.

A similar result was reached in United States v. Schmidt, 604 F. 2d 236 (3rd Cir. 1979), when a Defendant in a conspiracy case was denied a suppression hearing, on the basis of the results of a prior suppression hearing in the case of one of his alleged co-conspirators. In declaring it to be unconstitutional to bind the Defendant by the results of the hearing on a co-conspirator's motion, the court stated:

> "Schmidt contends that the District Court erred in denying his motion for a suppression hearing. The court's rationale was that it had previously denied a suppression motion by Schmidt's co-conspirators which challenged the same search to which Schmidt objected, and that Schmidt had no new evidence to offer. We believe, however, it is elemental that a Defendant may not be denied a suppression hearing solely on the basis of a previous hearing to which the Defendant was not a party, unless there is a showing that the Defendant had

stipulated to or acquiesced in the trial court's reliance on the transcript of the prior hearing." Id. at 238.

In reaching its holding, the court specifically relied upon McKinney v. Alabama, supra, 424 U.S. 669, (1976). See 604 F. 2d at 238, n.5.

The principle was again enunciated in American Postal Workers Union, Columbus Area Local, AFL-CIO, v. United States Postal Service, 736 F. 2d 317 (6th Cir. 1984), in which a local union filed a civil action to enjoin the postal service from disciplining postal workers for failure to maintain an adequate work schedule, when their absence was caused by use of approved sick leave. The trial court dismissed the lawsuit, on the ground that a similar lawsuit brought by a Dallas local of the same union had been dismissed, holding that a decision involving the Dallas local was res judicata as to the Columbus local. In reversing the dismissal on appeal, the court stated:

> "We agree with the union that res judicata does not lie in this case for two reasons. First, there is insufficient evidence that the Columbus local was in privity with the Dallas local. The trial court seemed to believe that because there was an identity of interests between the two locals, the Columbus local's lawsuit could be barred by the Dallas decision. However, identity of interests, without more, will not suffice to a bar a suit by a nonparty." [Citations omitted.]" Id. at 318.

Among the citations omitted from the quotation, relied upon by the court was McKinney v. Alabama, supra, see Id. at 318.

Also on point is Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, (1971), in which this Court made it clear that the rule against applying collateral estoppel to a non-party to a prior litigation is grounded in the constitutional principle of due process of law. In Blonder-Tongue, the Court stated:

> "Some litigants, those who never appeared in a prior action -- may not be collaterally estopped without litigating the issue. They have never had a chance to present their evidence and arguments on the claim. Due process prohibits estopping them despite one or more existing adjudications of the identical issue which stand squarely against their position (emphasis supplied)." Id. at 329.

Likewise, in Fuentes v. Shevin, 407 U.S. 67, (1972) this Court stated:

> "The constitutional right to be heard is a basic aspect of a duty of government to follow a fair process of decision-making when it acts to deprive a person of his possession...No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of a case against him and an opportunity to meet it." 407 U.S. at 80-81.

More directly on point is this Court's recent decision in United States v. Good Real Property, __ U.S.__, 62 U.S.L.W. 4013 (December

13, 1993), in which this Court held that forfeiture of real property pursuant to Title 21 U.S.C. Section 881(a)(7), on the basis of its being used to facilitate a drug transaction, without prior notice to the property owner and an adversary hearing on the merits of the forfeiture claim violated the Due Process Clause of the Fourteenth Amendment, notwithstanding the fact that the property owner had in fact pled guilty to promoting a harmful drug, as a result of 89 pounds of marijuana having been seized from the very home from which forfeiture was sought. This Court rejected the assertion that the property owner's own prior plea of guilty deprived him of the right to a hearing on the substance of the forfeiture charge, stating:

> "[T]he suggestion that this one Petitioner must lose because his conviction was known at the time of seizure, and because he raises an as applied challenge to the statute, founders on a bedrock proposition: fair procedures are not confined to the innocent. The question before us is the legality of the seizure, not the strength of the Government's case." Id. at 4018. T

Thus, if it was a deprivation of due process to deprive the property owner in Good of the hearing on the merits, based upon that property's own conviction and plea of guilty, than it is certainly more violative of due process to deprive this Petitioner of all use of her property for a period of one year, based upon the conviction of three

other persons, in proceedings at which she had no opportunity to be heard.[10]

Petitioner's situation is even further aggravated by the fact that, under the decisions of the United States Supreme Court in North Carolina v. Alford, 400 U.S. 25, (1970), and the Minnesota Supreme Court in State v. Goulette, 258 N.W. 2d 758 (Minn. 1977), a Defendant may enter a plea of guilty to a criminal charge, while continuing to deny that he or she committed the offense. As a result, if a Defendant enters a plea under Alford and Goulette, denying that he or she committed the prostitution offense in question, that plea of guilty remains absolutely binding upon the Defendant in a subsequent nuisance action under Sections 617.80-617.87, even though the Defendant entering the plea absolutely denied having committed the offense in question. Such a result is plainly inconsistent with basic due process requirements.

In rejecting the Petitioner's constitutional challenges to the statute, the Minnesota Court of Appeals relied exclusively on Hvamstad v. Suhler, 727 F. Supp. 511 (D. Minn. 1989), aff'd, 915 F. 2d 1218 (8th Cir.

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[10]Obviously, neither the Minnesota Court of Appeals nor the Minnesota Supreme Court had the benefit of the result of United States v. Good Real Property, supra, before it when it rendered its decision in the above-entitled matter. Obviously, an appropriate disposition would be to remand the matter to the Minnesota Supreme Court for reconsideration in light of this obviously controlling decision.

1990). See 504 N.W. 2d at 525-6. The decision is both unpersuasive or indistinguishable and should not be followed. To begin with, the District Court in Hvamstad stated the following:

> "Section 617.82 provides that no injunction can be issued without a prior show cause notice of hearing to the landowner and an opportunity for the landowner to be heard. Section 617.83 further provides that upon proof of a nuisance as defined in the statute, the court shall issue a permanent injunction and order an abatement. Thus, it is clear that the statute requires a hearing where the landowner has an opportunity to prove that there were no alleged convictions for the crimes described in the statute and occurring on the owner's property. Such a hearing satisfies due process requirements." 727 F. Supp. at 519.

The fallacy in the argument is obvious. The "opportunity" is only to prove that no convictions occurred, not that no prostitution occurred. This is precisely the same "opportunity" held insufficient in McKinney, in which it was clear that the Defendants had the "opportunity" to prove, not that the magazine in question was not obscene, but only that it had not been found obscene in another judicial proceeding to which they were not a party. Obviously, the very essence of McKinney and its progeny are that such an "opportunity" is no opportunity at all, for due process purposes.

Equally unpersuasive was the second argument advanced by the

District Court in Hvamstad[11], which was the following:

> "The legislature, in outlining the number of crimes necessary to automatically invoke the statute, was simply making a judgment under its police power as to what constitutes a nuisance. Such a legislative determination is subject to challenge only if no reasonably conceivable set of facts could establish a rational relationship between the statute and a legitimate end of government. See, e.g. United States v. Carolene Products Co., 304 U.S. 144, 154 (1938). The legislature could properly conclude that convictions of prostitution or gambling on property are sufficient evidence that property has become a nuisance." 727 F. Supp. at 514.

The District Court's opinion ignores the fact that it was precisely such a legislative determination which the United States Supreme Court invalidated in McKinney v. Alabama, supra, 424 U.S. 669 (1976). Moreover, as already noted, supra, although McKinney involved the question of First Amendment rights, cases subsequent to McKinney have repeatedly relied upon McKinney in non-First Amendment contexts, to support the proposition that it is violative of due process to bind a litigant to the results of a proceeding in which he did not participate and had no opportunity to be heard, regardless of the absence of First Amendment implications. See United States v. Schmidt, supra, 604 F. 2d 236, 238, n. 5 (3rd Cir. 1979); American Postal Workers Union,

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[11]This rationale was the sole rationale relied upon by the Eighth Circuit in affirming the District Court decision. See 915 F. 2d at 1219-1220.

Columbus Area Local, AFL-CIO v. United States Postal Service, supra, 736 F. 2d 317, 318 (6th Cir. 1984); and Martin v. Wilks, 409, U.S. 755, (1989).

One additional note should be made concerning Hvamstad v. Suhler, supra. Among the arguments advanced by the Eighth Circuit in Hvamstad in upholding the statute against a due process challenge is the reliability of prior criminal convictions, since they are premised on a requirement of prove beyond a reasonable doubt. However both this Court and the Minnesota Supreme Court, in adopting their respective Rules of Evidence, have plainly given an indication of the reliability they attach to misdemeanor and gross misdemeanor convictions. In particular, Rule 803(22) of both the Federal Rules of Evidence and the Minnesota Rules of Evidence limit their exceptions to the hearsay rule concerning criminal convictions to those convictions involving crimes "punishable by death or imprisonment in excess of one year ...."

The Advisory Committee's Note to Rule 803(22) of the Federal Rules of Evidence states the following:

> "Practical considerations require exclusion of convictions of minor offenses, not because the administration of justice in its lower echelons must be inferior, but because motivation to defend at this level is often minimal or nonexistent. [Citations omitted.] Hence the rule

> includes only convictions of felony grade, measured by federal standards."[12]

Consequently, criminal convictions which the Minnesota Supreme Court and this Court deem too inherently unreliable, even to be admitted into evidence as against the hearsay objection, are conclusive, as against Petitioners in this case. A more serious procedural due process violation could hardly be imagined.

However, even assuming Hvamstad were correctly decided and thus controlling, Hvamstad is plainly distinguishable on the facts, and that distinction plainly compels invalidation of the statute as applied to the facts in this case. In affirming the District Court decision in Hvamstad, the Eighth Circuit stated the following:

> "If the statute permitted abatement on evidence of a single conviction with no opportunity for the property owner to deny the underlying act or first to eliminate the illegal act himself, the law would likely neither be reasonable nor constitutional.
>
> However, the abatement statute sub judice is designed to

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[12]In the present case, the plea of Kathie Lee Moos provides a perfect illustration of why both the Minnesota and this consider convictions of less than felony level to lack sufficient reliability to be admissible, because of lack of motivation to defend. The Court records of Ms. Moos's plea of guilty were received in evidence and a copy is set forth in Petitioner's Appendix at A.132 - A.134. As that record indicates, Ms. Moos, needing $1,000.00 bail to get out of jail pending trial, was offered a plea of guilty in exchange for $25 fine and no executed jail time. Given a prosecutor's virtually unlimited power to buy a plea of guilty with such an offer, there is little wonder why such pleas should be considered unreliable.

> encourage property owners to abate the basis of the nuisance themselves by delivering notice of conviction to the owners. Those owners who do not abate the criminal activity, and instead allow it to continue on their premises despite the Notices of Conviction therefrom, then face a judicial determination of nuisance and abatement based on the convictions, not the acts."
> 915 F. 2d at 1220.

Thus, the Eighth Circuit plainly premised its finding of constitutionality on the notion that a property owner would receive notice of the first conviction and could use such notice to prevent the second and third convictions from taking place. The Eighth Circuit plainly held that it was unconstitutional either to deny the property owner the right to contest the underlying conduct in the first instance, or, upon receiving notice of the conduct, the opportunity to eliminate future illegal conduct. In fact, that is precisely what took place in the instant case.

In the instant case, three of the four convictions occurred while Petitioner Magnuson had no control of the premises whatsoever.[13]

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[13] The only conviction that occurred arising out of Petitioner's operations resulted from an arrest that occurred on March 19, 1992, the last of the four convictions. The conviction (although not the underlying conduct) occurred on September 24, 1992, after the court had already issued its temporary injunction halting further operation of Yoshiko's Sauna. Thus, Petitioner was not in a position where she received initial notices of conviction and failed to correct an existing situation on her premises. All predicate convictions occurred while she had absolutely no control of the premises, and no opportunity to prevent future conduct from occurring. In such circumstances, it is clear that even the Hvamstad

II. THE STATUTES ARE FURTHER UNCONSTITUTIONAL IN THAT THEY VIOLATE PETITIONER'S RIGHT TO FREEDOM OF ASSOCIATION AS GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

What is particularly noteworthy about Minnesota Statutes Sections 617.80-617.87 is the fact that the statute does not require as the owners or tenants of buildings, themselves engage in any unlawful activity. All that is required is that they own a building in which three misdemeanor convictions for prostitution arise, or two convictions, at least one of which is a gross misdemeanor or felony, arise. The conduct giving rise to the conviction need not be committed by Petitioner herself, or by anyone acting with her knowledge or authorization. The conduct may be committed by tenants, visitors, or even trespassers on the premises. Thus, Petitioner is subject to having their premises closed, not for her own conduct, but rather solely for association with others who engage in wrongful conduct.

As such, the statute violates long-standing principles repeatedly enunciated by this Court, holding that the Freedom of Association guarantee of the First Amendment, as applied to the states by the

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decision would declare both the injunction and abatement order to be a violation of due process.

Fourteenth Amendment, prohibits the imposition of criminal or civil liability upon one person for the criminal conduct of another, in the absence of a showing of knowledge of that conduct and the specific intent to further the illegal conduct. See, for example, Elfbrandt v. Russell, 384 U.S. 11 (1966); Keyishian v. Board of Regents of the State University of New York, 385 U.S. 589 (1967); United States v. Robel, 389 U.S. 258 (1967); Healy v. James, 408 U.S. 169 (1972); and N.A.A.C.P. v. Clairborne Hardware Co., 458 U.S. 886 (1982). The overbreadth of the statute, as far as invasion of associational rights is concerned, becomes readily apparent when one examines the definitions contained in the applicable Minnesota statutes.

For example, Minnesota Statutes Section 617.80, Subd. 4 defines the term "prostitution" as "the conduct defined in Sections 609.321 to 609.324." Minnesota Statutes Section 609.321, Subd. 9, in turn, defines the term "prostitution" as "engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact." Minnesota Statutes Section 609.324, Subd. 3, in turn, makes a simple offer or agreement to engage in prostitution a misdemeanor offense, but also makes the offense a gross misdemeanor, if the offer or agreement occurs in a "public place". Thus, what is required to mandate the closure of an

establishment such as Petitioner's is not the actual commission of an unlawful sex act on the premises, but only engaging in a conversation in which the act is either offered or an offer to engage in the act is accepted. If the premises are an establishment open to the public, only two such conversations within a two-year period result in mandatory closure of the establishment.[14] As a result, any person operating any establishment open to the public, at which two people may engage in a conversation, is subject to penalty under this statute. Obviously, a prohibited conversation can occur in any hotel, office building, restaurant, bar, church, synagogue, assembly hall, or even government building, at which two people can meet and converse. Plainly, the statute gives to prostitutes an unlimited authority to force the closure of any such building in the State of Minnesota, since all that is required is that the prostitute engage in a prohibited conversation in that building, either two or three times, in order to mandate the closure.

More frighteningly, however, it gives that same authority to police. Obviously, if the police desired to close down the Marriott Hotel in the City of Minneapolis, all that would be required under the statute

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[14] See Minnesota Statutes Section 617.81, Subd. 2(1).

would be for an undercover officer to rent a room in the Marriott on two separate occasions, and call two outcall prostitution services to his room, giving him the two gross misdemeanor convictions necessary to close down the Marriott Hotel. Police could do exactly the same thing, not only to every hotel or motel, but to virtually any building in the state open to the general public, including of course, any restaurant, bar, church, synagogue, office building, meeting hall, or even courthouse in which an undercover officer can arrange to meet a prostitute from an outcall service. Obviously, the harm that can be done to associational and expressive rights by granting such authority to police is limited only by the willingness of the police to exercise such authority.[15]

CONCLUSION

For all of the foregoing reasons, Petitioner's Petition for Writ of

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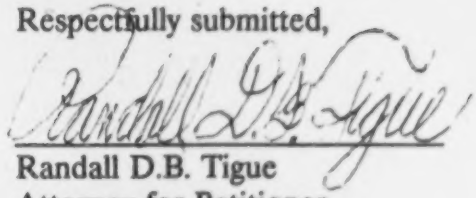
[15]The courts in Hvamstad v. Suhler, supra, clearly erred in rejecting a freedom of association challenge to the statute in question, in reliance on Roberts v. United States Jaycees, 468 U.S. 609 (1984), and Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987), holding that only "intimate" and "expressive" associations were entitled to constitutional protection. The Hvamstad courts failed to distinguish between mere regulation of association, as was the case in Robert and Rotary International, and criminally or civilly punishing the fact of association itself, something which this Court and others have clearly prohibited, even in the absence of an intimate or expressive type of association. See, for example, Scales v. United States, 367 U.S. 203, 224-225, 229-230 (1961); Coates v. Cincinnati, 402 U.S. 611, 615-616 (1971); Tyson v. New York City Housing Authority, 369 F. Supp. 513 (S.D.N.Y. 1974); Sawyer v. Sandstrom, 615 F. 2d 311 (5th Cir. 1980); and Fisher v. Snyder, 346 F. Supp. 396 (D. Neb. 1972), aff'd 476 F. 2d 375 (8th Cir. 1973).

Certiorari should be, in all respects, granted.

Respectfully submitted,



Randall D.B. Tigue
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Dated: January 21, 1994.

SUPREME COURT OF THE UNITED STATES
October Term, 1993
No.

Supreme Court, U.S.
FILED
931261 JAN 28 1994
OFFICE OF THE CLERK

Myong Magnuson, d/b/a
Yoshiko's Sauna,

Petitioner,

vs.

City of Minneapolis,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME I

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation, Case No.: 92-08094

Plaintiff, Case Type: Injunction

vs.

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong Magnuson **SUMMONS**

dba Yoshiko's Sauna,

Defendants.

STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon plaintiff's attorney an answer to the Complaint which is herewith served upon you within 20 days of service of this Complaint upon you, exclusive of the day of service. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint.

Dated: April 24, 1992

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Case No. : 92-08094

Plaintiff, Case Type: Injunction

vs.

VERIFIED COMPLAINT

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong Magnuson

dba Yoshiko's Sauna,

Defendants.

The above-named Plaintiff, for its Complaint against Defendants, hereby alleges the following:

1. This action is brought pursuant to Minnesota Statutes Sections 617.80 through 617.87 to order the abatement of a public nuisance, Yoshiko's Sauna, located at 117 North Washington Avenue, in the City of Minneapolis.

2. Plaintiff City of Minneapolis is a municipal corporation organized under the laws of the State of Minnesota.

3. The legal description of the property at 117 North Washington Avenue, Minneapolis, Minnesota is the northwesterly 22 feet of Lot 8, Block 55, town of Minneapolis addition. The Hennepin County property identification number is 22-029-24-41- 0065. The building situated on the property contains a business known as Yoshiko's Sauna.

4. Defendants Helen Fisher and Un Sil Olson aka Un Sil Berg are the fee owners of record of the property at 117 North Washington Avenue, Minneapolis, Minnesota, holding title by warranty deed dated June 13, 1983. Defendant Helen Fisher is the taxpayer of record for the property as recorded with the Hennepin County Auditor for taxation purposes, and therefore the "owner as defined in Minnesota Statutes, Section 617.80, Subd. 7.

5. Myong Magnuson has registered the name "Yoshiko's, as an unincorporated business trade name with the Minnesota Secretary of State as of March 27, 1991. On information and belief, Magnuson is the manager or operator of Yoshiko's Sauna.

6. There have been two (2) criminal convictions for acts of prostitution committed within Yoshiko's Sauna which qualify to establish that the premises is a nuisance under Minnesota Statutes, Section 617.81. One of the convictions is a gross misdemeanor. These

convictions are specifically described below:

(a) Defendant: Suzy W. Kotts

HCDC File No. 90-089051

Charge: Prostitution (M.S. 609.324 s.3)

Date of Offense: 11-27-90

Date of Conviction: 3-27-91

Notice of Conviction: 4-24-91

Category: Gross Misdemeanor

(b) Defendant: Lola Jean Skenadore aka Ekobena

HCDC file No. 91-039512

Charge: Prostitution (M.S. 609. 324s.3)

Date of Offense: 6-4-91

Date of Conviction: 9-19-91

Notice of Conviction: 9-23-91

Category: Misdemeanor

As a result of the above-described prostitution convictions, the building at 117 North Washington Avenue containing the Yoshiko's Sauna constitutes a public nuisance under Minnesota Statutes, Section 617.81.

7. Notice of the above-referenced convictions has been mailed by the Hennepin County District Court administrator to the owners of the building as defined in Minnesota Statutes, Section 617.80, Subd. 7, and to interested parties as defined in Minnesota Statutes, Section 617.80, Subd. 8. Notices of the above-referenced convictions have been filed with the Hennepin County Recorder against the property located at 117 North Washington Avenue.

8. Pursuant to Minnesota Statutes, Section 617.81, Subd. 3, notice of the above-referenced convictions is sufficient to inform all interested parties that the building at 117 North Washington Avenue is being used for purposes constituting a public nuisance. Despite notice of the above-referenced convictions, the defendants have done nothing to stop Yoshiko's Sauna from operating at 117 North Washington Avenue.

9. Since the date on which notice of the most recent prostitution conviction was mailed to owners and interested parties, there have been two additional arrests for acts of prostitution occurring at Yoshiko's Sauna. These arrests are as follows:

(a) Defendant: Kathie Lee Moos

HCDC File No.: 91-091402

Charge: Prostitution (M.S. 609.324s.3)

Date of Offense: 12-10-91

Status: Bench Warrant (No appearance at Trial 4-2-92)

(b) Defendant: Frances Tamel Brown

HCDC File No.:

Charge: Prostitution (M.S. 609 .324s.3)

Date of Offense: 3-19-92

Status: 1st appearance 5-6-92

10. During their visits to Yoshiko's Sauna, vice officers have observed that female employees greet customers and perform massages in lingerie or other revealing clothing, and that the business engages in other practices indicating that it is not a legitimate sauna or massage business, but an outlet for prostitution.

11. As a result of the prostitution convictions set forth in paragraph 6 of this Complaint, and the continued course of unlawful conduct at Yoshiko's Sauna, the building at 117 North Washington Avenue constitutes a public nuisance under Minnesota Statutes, Sections 617.80 through 617.87.

12. In the interest of the public welfare, a temporary and permanent injunction, and an order for abatement, are necessary to prevent further

unlawful activity.

WHEREFORE, plaintiff requests the judgment and decree of the Court as follows:

1. Declaring the building at 117 North Washington Avenue,, Minneapolis, Minnesota, to be a public nuisance under Minnesota Statutes, Sections 617.80 through 617.87.

2. Entering an order of abatement pursuant to Minnesota Statutes, Section 617.83, directing the closing of the building at 117 North Washington Avenue for one year. Appointing a receiver to control and use the building, or affected portion thereof, in a manner approved by the court, pursuant to Minnesota Statutes, Section 617.84.

3. Directing the removal of movable property used in conducting and maintaining Yoshiko's Sauna and the sale of such property, pursuant to Minnesota Statutes, Section 617.84.

4. Ordering Defendants to do all necessary acts to cause the immediate cessation of the business known as Yoshiko's Sauna at 117 North Washington Avenue, including, if necessary, canceling any lease or contract with Yoshiko's Sauna, and evicting yoshiko's Sauna from the building.

5. Temporarily and permanently enjoining defendants from operating,

leasing to, or allowing any other person to operate, any other sauna, massage parlor, rap parlor, outcall service, escort service, or similar business, at 117 North Washington Avenue.

6. Temporarily and permanently enjoining any person who owns, operates, or manages the business known as Yoshiko's Sauna from operating said business.

7. Ordering defendants to post a bond in the sum of ½ $50,000.00 conditioned that they will immediately abate the public nuisance at 117 North Washington Avenue for a period of at least one year, and will not allow any part of the building at 117 North Washington Avenue to be used for prostitution-related activities.

8. Ordering defendants to pay all costs and disbursements incurred by plaintiff in this action.

9. Imposing the continuing jurisdiction of the Court upon defendants for such reasonable time, not less than one year, to assure compliance by the defendants with the orders of the court in this action.

10. For such other relief as the Court may deem just, fair, and equitable.

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

By:

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

VERIFICATION

STATE OF MINNESOTA)

)ss

COUNTY OF HENNEPIN)

Scott Reeves, being first duly sworn, upon oath says: that he is an officer of the City of Minneapolis, to-wit, an assistant city attorney; that he has read the foregoing Verified Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

_____

Scott Reeves

Sworn to and subscribed before me

this ____ day of_____, 1993

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff,

vs.

Helen Fisher, Un Sil Olson a/k/a Un Sil Berg, and Myong Magnuson, d/b/a Yoshiko's Sauna,

Defendants.

SEPARATE ANSWER, COUNTERCLAIM AND CROSSCLAIM OF DEFENDANT MYONG MAGNUSON

Case No. 92-8094

Defendant Myong Magnuson, by the undersigned, for her answer to Plaintiff's complaint alleges the following:

FIRST DEFENSE

1. Except as hereinafter admitted or qualified, this answering Defendant denies each and every allegation of Plaintiff's Complaint.

2. This answering Defendant admits the allegations contained in Paragraphs 2, 3 and 4 of Plaintiff's Complaint.

3. Defendant specifically denies the allegations contained in Paragraphs 8, 11, and 12 of the Complaint.

4. With respect to Paragraph 1 of the Complaint, this answering Defendant admits that the action purports to be brought under the statutes cited. This answering Defendant denies that Plaintiff is entitled to any relief under the statutes.

5. With respect to Paragraph 5 of the complaint, this answering Defendant admits to having registered the trademark "Yoshiko's" with the Secretary of State's office, in order to comply with the law. This answering Defendant denies that she is the exclusive manager, owner, or operator of said business.

6. This answering Defendant admits that the prostitution convictions alleged in paragraph 6 have occurred. This answering Defendant specifically denies that the conduct leading to said convictions occurred at any time that this answering Defendant had a legal interest in or operational control over the subject premises.

7. With respect to paragraph 7 of the complaint, this answering Defendant admits that the notices set forth were mailed to the owners of the building and that said notices have been filed with the County Recorder. This answering Defendant specifically denies that said notices have been mailed to all interested parties, as defined in Minnesota Statutes Section 617.80, Subd. 8.

8. With respect to Paragraph 9 of the complaint, this answering Defendant admits that the two prostitution arrests alleged in said paragraph have occurred. This answering Defendant affirmatively alleges that, in the absence of convictions, said arrests are irrelevant. This answering Defendant further denies that they occurred subsequent to the mailing of notices to owners and interested parties, in that this answering Defendant denies that notice has been mailed to all interested parties.

9. With respect to paragraph 10 of the complaint, this answering Defendant is without sufficient knowledge to admit or deny what vice officers have observed on their visits to Yoshiko's Sauna. This answering Defendant specifically denies that Yoshiko's is an outlet for prostitution during the period of time that said premises are controlled by this answering Defendant.

SECOND DEFENSE

10. This answering Defendant leases only one-half interest in the premises known as Yoshiko's Sauna.

11. Said lease permits this answering Defendant to occupy the subject premises only one-half of the days of each calendar year.

12. On the remaining days of the year, the other one-half interest is

leased, occupied and controlled exclusively by one Suzy Woo Kotts.

13. Both of the convictions alleged in Paragraph 6 of Plaintiff's complaint, giving rise to the alleged nuisance occurred during the period of time when the premises were occupied and controlled exclusively by said Suzy Woo Kotts, not by this answering Defendant.

14. As a result, this answering Defendant is not chargeable with maintaining a nuisance building, within the meaning of the statutes in question.

THIRD DEFENSE

15. This answering Defendant re-alleges the allegations set forth in Paragraphs 1-14, supra.

16. As a result, to enforce the nuisance abatement statute against this answering Defendant would constitute a deprivation of the right to property without due process of law.

THIRD DEFENSE

17. This answering Defendant re-alleges the allegations set forth in Paragraphs 1 - 16, supra.

18. As a result, to enforce the nuisance abatement statute this answering Defendant would constitute an unlawful taking of this answering Defendant's property without just compensation, in violation

of the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 13 of the Minnesota Constitution.

FOURTH DEFENSE

19. This Court lacks subject matter jurisdiction to hear the present lawsuit, in that the court administrator has failed to mail Notice of Convictions to all interested parties, within the meaning of Minnesota Statutes Section 617.80, Subd. 8, as mandated by Minnesota Statutes Section 617.81, Subd. 3.

COUNTERCLAIM

For her counterclaim against Plaintiff, this answering Defendant alleges the following:

1. This answering Defendant re-alleges the allegations set forth in his answer, supra.

2. The 1987 session of the Minnesota Legislature enacted Minnesota Statutes Section 617.80-617.87, relating to civil actions for the abatement of public nuisances. Such statute provides, in pertinent part, as follows:

617.80 Definitions

Subdivision 1. Generally. The definitions in this section apply to Sections 617.80 to 617.87.

Subd. 2. Building. 'Building' means the structure suitable for human shelter, a commercial structure that is maintained for business activities but involve human occupation or any portion of such structures.

Subd. 3. Movable property. Movable property' means furniture and fixtures.

Subd. 4. Prostitution. 'Prostitution' or 'prostitution related offenses' means the conduct defined in Sections 609.321 to 609.324. ***

Subd. 6. Disorderly House. 'Disorderly house' has the meaning assigned to it in Section 609.333.

Subd. 7. Owner. 'Owner' for purposes of Sections 617.80 to 617.87 means the person in whose name the building or affected portion is recorded with the county auditor for taxation purposes.

Subd. 8. Interested Party. 'Interested party' for the purposes of Sections 617.80 to 617.87 means any lessee, tenant, or occupant of a building or affected portion of a building and any known agent of an owner, lessee, tenant, or occupant.

617.81. Nuisance; acts constituting; injunction; notice.

Subdivision 1. Injunction. In order to maintain a temporary injunction under Section 617.82 or a permanent injunction or order of abatement under Section 617.83 the provisions of 617.80 to 617.87 must be followed.

Subdivision 2. Acts constituting a nuisance. For purposes of sections 617.80 to 617.87 a public nuisance exists upon proof of any of the following:

Three or more misdemeanor convictions or two or more convictions, of which at least one is a gross misdemeanor or felony within the previous two years for acts of prostitution or prostitution-related offenses committed within the building;

(3) Two or more convictions within the previous two years for keeping or permitting a disorderly house in the building.

Subdivision 3. Notice. Notice of a conviction described in Subdivision 2 must be mailed by the Court Administrator to the owner of the building where the offense was committed and all other interested parties and must filed with the County Recorder's office. This notice is considered sufficient to inform all interested parties that the building or portion of it is being used for purposes constituting a public nuisance.

617.82.Temporary Order.

Whenever a city attorney, county attorney, or the attorney general has cause to believe that a nuisance described in Section 617.81 Subdivision 2, exists within the jurisdiction the attorney serves, that attorney may by verified petition seek a temporary injunction in district court in the

county in which the alleged public nuisance exists. No temporary injunction may be issued without a prior show cause notice of hearing to the respondents named in the petition and an opportunity for respondents to be heard. Upon proof of a nuisance described in Section 617.81 Subdivision 2 the court shall issue a temporary injunction. Any temporary injunction issued must describe the conduct to be enjoined.

617.83. Injunction; order of abatement.

Upon proof of a nuisance described in Section 617.81, Subdivision 2, the court shall issue a permanent injunction and enter an order of abatement. The permanent inunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of building or a portion of it for one year except as otherwise provided in Section 617.84 or 617.85, unless sooner released pursuant to Section 617.87. Before an abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under Section 617.85 in the same manner that a summons is served under the Rules of Civil Procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or the affected portion.

617.84. Movable property.

The order of abatement may direct the removal of movable property used in conducting or maintaining the nuisance and direct the sale of property belonging to respondent who was notified or appeared. The sale shall be conducted pursuant to the provisions of Chapter 550 on the sale of property on execution. A person appointed by the court as a receiver of the building may use a building or portion of it which is the subject of an abatement order in a manner approved by the court. Cost of the sale on execution, moving and storage fees, and any receivership must be paid out of the proceeds of the sale of movable property or any rents collected during the receivership. The balance from the sale of movable property.

617.85. Nuisance; motion to cancel lease.

Where an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding, may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. In addition to the grounds provided in Chapter 566, the

maintaining or conducting a nuisance as defined in Section 617.81, Subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease for restitution of the premises. It is no defense to a motion under this section by the owner that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the grounds provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building under control of the tenant or lessee, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(a) Upon motion of the building owner cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and

(b) Further finds that the acts constituting the nuisance as defined in Section 617.81, Subdivision 2 were committed in a portion of the building under the control of the tenant or lessee whose lease or tenancy has been cancelled pursuant to this section.

617.86. Contempt.

Whoever violates a temporary injunction, permanent injunction, or

abatement order granted under Sections 617.80 to 617.87 may be adjudged in contempt of court.

617.87. Release of Property.

If, after an order of abatement has been entered, the owner appears and pays the cost of the action and files a bond in an amount determined by the court, but not to exceed $50,000, conditioned that the owner will immediately abate the nuisance for a period of one year, the court may, if satisfied of the owner's good faith, order release of the building or portion of it which is subject to the order of abatement. If the premises are released, for each day of the term of the bond that the owner knowingly permits any part of the premises to be used for any activity which was the basis of the abatement order, the owner shall forfeit $ 1,000 under the bond. Forfeiture under the bond does not relieve the owner from prosecution for contempt. Release of the property pursuant to this section does not release it from an injunction issued under Section 617.83 or any other judgment, penalty, lien or liability to which it may be subject by law.

3. Upon information and belief, within the preceding two years, two persons have been convicted of prostitution related offenses at Yoshiko's Sauna at 117 North Washington, Minneapolis, according to the

allegations of paragraph 6 of Plaintiff's complaint.

4. As a result, by virtue of the conduct of the individuals involved in the above-mentioned criminal convictions, this answering Defendant is subject to having her business and real property interest closed for all purposes for a period of up to one year, and having all movable property therein sold, even if this answering Defendant had no knowledge of the actual activity occurring therein before it took place, no ability to prohibit or control said conduct and did not have the specific intent to further that unlawful conduct.

5. As a result, Minnesota Statutes Sections 617.80617.37 unconstitutionally infringe upon this answering Defendant's right to freedom of association as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

6. This answering Defendant was not a party to either of the criminal prosecutions set forth in Paragraph 6 of Plaintiff's complaint. As such, she had no opportunity to participate in or be heard at any of the criminal proceedings as to the guilt of innocence of the Defendants therein.

7. Under the plain language of Minnesota Statutes Section 617.81, Subd. 2, upon two or three prostitution convictions, depending on

whether they are for gross misdemeanors, misdemeanors, or felonies, this answering Defendant's premises, are conclusively determined to be a public nuisance and this answering Defendant is barred from contesting the allegations of nuisance, despite the fact that this answering Defendant was not a party to or participant in the criminal proceedings which gave rise to the convictions and had no opportunity to be heard at those proceedings.

8. As a result, Minnesota Statutes Section 617.81, Subd. 2 and the related sections authorizing temporary injunctions, permanent injunctions, and orders of abatement are facially unconstitutional and unconstitutional as applied to this answering Defendant in that they deprive this answering Defendant of property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution, Article 1, Section 7 of the Minnesota Constitution.

9. This answering Defendant has no adequate remedy at law.

10. As a result, this answering Defendant is entitled, pursuant to Title 42 U.S.C. Section 1983, and Minnesota Statutes Section 551.01, et.seq., to an order declaring Minnesota Statutes Sections 617.81 -617.87 facially unconstitutional, the First and Fourteenth Amendments to the United States Constitution.

CROSS-CLAIM

For her cross claim against Defendant Un Sil Olson, Defendant Myong Magnuson alleges the following:

1. Defendant Myong Magnuson adopts and incorporates by reference the allegations set forth in her Answer and Counterclaim, supra.

2. Defendants Un Sil Olson, and Helen Fisher are each owners of an undivided one-half interest in the real estate located at 117 North Washington Avenue, Minneapolis, Minnesota, which houses, inter alia Yoshiko's Sauna.

3. In August of 1988, Defendant Myong Magnuson entered into a lease agreement with Defendants Olson and Fisher, a copy of which is attached hereto as Exhibit A. Pursuant to said lease agreement, Defendant Myong Magnuson agreed, commencing September 1, 1988, to rent Yoshiko's Sauna on alternate days, commencing September 1, 1988. On days in which Defendant Myong Magnuson Did not occupy the premises, the premises were independently leased to one Kyong Ye Firnstahl.

4. On or about October 13, 1988, Defendant Magnuson entered into an agreement of sale and lease with Defendant Fisher, a copy of

which is attached hereto as Exhibit B, in which Defendant Magnuson agreed to lease and purchase Defendant Fisher's undivided one-half interest in the Yoshiko's Sauna business. The sale, however, was delayed until July 1, 1989, when co-tenant Firnstahl's tenancy terminated.

5. Following the termination of Defendant Firnstahl's tenancy, Defendant Magnuson operated the premises, pursuant to the sale and lease agreement with Defendant Fisher until August of 1990.

6. In August of 1990, Defendant Olson, over Defendant Magnuson's strenuous objection, leased her one-half interest in the subject premises to one Suzy Woo Kotts.

7. Following said lease of Defendant Olson's interest to Suzy Woo Kotts, Defendant Magnuson again had only the right to occupy the premises on alternate days, pursuant to her lease and purchase agreement with Defendant Fisher, with Suzy Woo Kotts occupying the premises on alternate days, pursuant to her lease with Defendant Olson.

8. The conduct leading to both of the convictions which give rise to the alleged nuisance occurred while the premises were exclusively under the occupation and control of Suzy Woo Kotts, not Defendant Magnuson.

9. As noted in Defendant's Answer and Counterclaim, supra,

under the provisions of Minnesota Statutes Section 617.85, if the nuisance is caused exclusively by a tenant, the abatement proceedings can be halted by an order compelling the eviction of the offending tenant.

10. In her capacity as a tenant and contract vendee of Defendant Fisher, Defendant Magnuson has no authority to terminate the tenancy of Suzy Woo Kotts, whose conduct has given rise to the alleged nuisance.

11. As a matter of equity, Defendant Magnuson is entitled to an Order compelling Defendant Olson, through whom said Suzy Woo Kotts leases the premises, to commence an action to terminate the tenancy of Ms. Kotts, pursuant to Minnesota Statutes Section 617.85.

12. In the alternative, in the event that said tenancy is not terminated, and Defendant Magnuson's right to occupy the premises is lost for one year, pursuant to the abatement proceedings, Defendant Magnuson is entitled to damages against Defendant Olson in the amount reasonably necessary to compensate her for her loss of business for the one-year period.

WHEREFORE, this Answering Defendant requests the judgment and decree of this Court as follows:

a. That Plaintiff take nothing by its pretended cause of action, and

that its complaint against this answering Defendant be dismissed with prejudice.

b. That, pursuant to this answering Defendant's counterclaim, this Court enter a declaratory judgment declaring Minnesota Statutes Section 617.81-617.87 facially unconstitutional and unconstitutional as applied to this answering Defendant.

c. That this Court issue a temporary and permanent injunction enjoining and restraining Plaintiff from taking any action to enforce Minnesota Statutes Section 617.81- 617.87.

d. That this answering Defendant be awarded her reasonable costs, disbursements, and attorney's fees pursuant to Title 42 U.S.C. Section 1988.

e. In the alternative, that this Court enter an Order compelling Defendant Olson to commence an action, pursuant to Minnesota Statutes Section 617.85, judicially terminating the tenancy of Suzy Woo Kotts, whose conduct as exclusive occupant of the premise gave rise to the convictions upon which these nuisance abatement proceedings are based, and that the complaint be dismissed with respect to the remaining Defendants.

f. In the event that a temporary or permanent injunction is issued

against this answering Defendant, that this answering Defendant be awarded damages against Defendant Olson for the loss of income reasonably attributed to such injunction.

g. That this Court grant such other and further relief as it may deem just, fair, and equitable.

Randall D.B. Tigue
Attorney for Defendant
Myong Magnuson
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903
Minn. Sup. Ct. Lic. No. 110000

Dated: May 14, 1992.

MEMORANDUM AGREEMENT

UN SIL BERG and HELEN FISHER own the real estate located at 117 North Washington Avenue in Minneapolis, Minnesota, and own sauna equipment and furniture, business, and personal property contained on the first floor at said premises. Helen.Fisher, individually and as agent for Un Sil Berg, having entered into a lease with KYONG YE FIRNSTAHL as a lessee thereof, for purposes of sharing said lease space with another; Un Sil Berg does hereby, individually and as agent

for Helen Fisher, enter into this agreement covering the lease of the first floor of the building at said premises, together with the sauna equipment and furniture, business, and personal property located therein, to MYONG C. MAGNUSON, as lessee thereof, under the following terms and conditions.

NOW, THEREFORE, The rights and obligations of said parties are agreed upon as follows:

1. Lessee Myong C. Magnuson shall share the usage of both the first floor of the premises and the sauna equipment and furniture, business, and personal property contained therein with Helen Fisher, or any lessee as may be designated by Helen Fisher, for purposes of each of the occupiers operating, independently, their own individual sauna business enterprise therein.

2. Lessee Myong C. Magnuson shall pay to Un Sil Berg as and for rent thereof the sum of $800.00 per month for the use of sauna equipment and furniture and personal property therein and an additional sum of $400.00 per.month for the leased premises, making a total of $1,200.00 monthly, in. advance, for the term of one year, commencing September 1, 1988, and continuing through August 31, 1989, the sum of $14,400.00 at the time of the execution of this lease. In the event,

however, that the demised premises, or any part thereof, or any part of the improvements of which they form a part, shall be taken for any street or other public use, or shall during the continuance of this one-year term be destroyed.

ADDENDUM

The foregoing memorandum agreement is to be read in conjunction with a similar memorandum agreement between Helen Fisher, individually and as agent for Un Sil Berg and Kyong Ye Firnstahl, providing a similar lease for the same premises. It is understood by all involved that Myong Magnuson and Kyong Ye Firnstahl will each have a half interest as Lessees of the premises, and that said parties have independently entered into an agreement wherein each shall operate the business as a whole on alternate days during the period of the lease, commencing with Kyong Ye Firnstahl taking over as the exclusive tenant on September 1, 1988, with Myong C. Magnuson taking over as the exclusive tenant on the following day, and said parties alternating control of the leased premises on alternate days until the lease is completed.

Dated: _____, 1988

_____
Helen Fisher
Dated: 8 - 25 - , 1988.

_____
Myong Magnuson
Dated: 8/25 , 1988.

AGREEMENT OF SALE AND LEASE

This agreement, effective the date set forth herein, is entered into between HELEN FISHER (also referred to both as "owner" and as "lessor" herein) on the one hand, and MYONG C. MAGNUSON (also referred to hereinafter as "buyer" and as "lessee" or, alternately, as "MCM")

NOW THEREFORE:

WHEREAS, HELEN FISHER, together with one Un Sil Olson, each own an undivided one-half interest as co-owners of the sauna equipment, furniture, business name "YOSHIKO'S", and personal property used in the sauna business contained on the first floor in the building known as 117 North Washington, Minneapolis, Minnesota; and also, they are the exclusive undivided co-owners of the fee title to that real estate, together with all fixtures attached, and

WHEREAS, HELEN FISHER wishes to sell her entire undivided interest in the sauna equipment, furniture, business name "YOSHIKO'S", and personal property used in the sauna business therein to MYONG C. MAGNUSON, who wishes to purchase and pay the price for same now with delivery of the objects of the sale, however, delayed until July 1, 1989, at which time MCM shall, in addition to acquiring the right to

possession of the objects of the sale, shall have the leasehold right to HELEN FISHER'S undivided one-half interest as a tenant for purposes of operating a sauna business in the premises.

NOW THEREFORE: In consideration of the foregoing and for good and valuable consideration, it is hereby agreed as follows between HELEN FISHER and MYONG C. MAGNUSON; and said agreement is herein approved and accepted in all respects by the co-owner, UN SIL OLSON, all as follows:

1. HELEN FISHER does hereby sell her entire one-half undivided interest in the following described business property to MYONG C. MAGNUSON for the cash price of $40,000 payable herewith, with delivery thereof and right to dominion thereof, deferred until July 1, 1989:

sauna equipment, furniture, business name "YOSHIKO'S", and personal property used in the sauna business.

2. MYONG C. MAGNUSON acknowledges that her right to occupy and use the objects of the sale is deferred until July 1, 1989, in that the objects of the sale are the subject of a lease with another lessee, and HELEN FISHER shall have the exclusive interest and right to the rents generating therefrom until July 1, 1989.

3. In the event that the City of Minneapolis should, for any reason, issue an order or decision having the effect of permanently closing down the premises as a sauna operation, provided however that the cause of the closure is not attributable to MYONG 0. MAGNUSON, HELEN FISHER shall refund the $50,000 cash purchase price to MCM, and shall have a period of up to six months from the time of the closure for purposes of accomplishing this cash refund.

4. In further consideration of the foregoing, the parties hereby enter into a lease covering the premises, which is attached hereto marked Exhibit A.

THIS AGREEMENT ENTERED INTO THIS 13th DAY OF OCTOBER, 1988.

_____
Helen Fisher

_____
Myong C. Magnuson

ACKNOWLEDGMENT AND ACCEPTANCE

UN SIL OLSON does hereby consent to and does approve of the sale by HELEN FISHER to MYONG C. MAGNUSON of HELEN FISHER'S undivided one-half interest in the property described in paragraph 1 of the Agreement herein and consents in all respects to the substitution of MYONG 0. MAGNUSON as a co-owner thereof, and further does hereby acknowledge her undivided one-half ownership therein.

UN SIL OLSON does hereby also consent in all respects to the lease entered into between the parties attached to the Agreement marked Exhibit A and made a part thereof.

Dated: October 13, 1988

_____

Un Sil Olson

MEMORANDUM LEASE

HELEN FISHER and UN SIL OLSON each own an undivided one-half interest in real estate located at 117 North Washington Avenue in Minneapolis, Minnesota. Under separate agreement HELEN FISHER has entered into a sale agreement with MYONG C. MAGNUSON covering her undivided one-half interest in the business assets used in the function and operation of the business known as, YOSHIKO'S" on the first floor of the premises. HELEN FISHER, herein individually, and also as agent for UN SIL OLSON, does hereby enter into this agreement covering the lease of the first floor of the premises to MYONG 0. MAGNUSON, as lessee thereof.

NOW, THEREFORE, The rights and obligations of said parties are agreed upon as follows:

1. Lessee MYONG C. MAGNUSON shall share the usage of the first floor of the premises for purposes of operating a separate and distinct sauna business enterprise therein, together with UN SIL OLSON, in the same area of the premises.

2. Lessee MYONG C. MAGNUSON shall have the right to commence her leasehold interest obtained herein from HELEN FISHER commencing July 1, 1989, through December 31, 1995, as the base term,

paying to HELEN FISHER as the monthly recompense thereof the sum of $700.00 per month, payable on the first day of each month, commencing July 1, 1989.

3. Lessee MYONG C. MAGNUSON shall have the right to an optional term commencing January 1, 1-996, through July 1, 2002, providing that notice of exercise of this option be given in writing to lessor at least six months, but not more than twelve months, before the expiration of the term, provided however that they are able to negotiate a monthly rental suitable to both, together with acceptable costs allocation of the utilities used to service the premises. The right to exercise this optional term shall also be dependent upon the lessee being current in all respects on all provisions of this lease, at the time of giving notice.

4. Lessee MYONG C. MAGNUSON shall also either pay directly to Minnegasco and the City of Minneapolis, or reimburse HELEN FISHER, on a monthly basis, one-half of the gas and water/sewer charges incurred.

5. Lessee MYONG C. MAGNUSON shall also be responsible for paying one-half the electrical costs metered into the leased premises.

6. Lessee MYONG C. MAGNUSON shall accomplish maintenance on the air-conditioning unit except that HELEN FISHER shall be responsible for such major repairs as exceed the sum of $300.00 per repair. Usage of the rear door and elevator area shall be shared with other lessees occupying the upper floors of the building on the premises.

Dated: October 14, 1988

Helen Fisher

Myong C. Magnuson

UN SIL OLSON, by affixation of her signature herein below hereby approves and consents to the undertakings of the parties herein, acknowledges her ownership of an undivided one-half interest in the fee, together with HELEN FISHER, and further consents and accepts the substitution of MYONG C. MAGNUSON for HELEN FISHER in the use and occupation of the space in the premises within the term of this lease.

Dated: 10 - 13, 1988

Un Sil Olson

THIS INDENTURE, made in duplicate this 13th day of October, 1988 by and between Helen Fisher, hereinafter designed and referred to as Lessor, and Myong C. Magnuson, hereinafter designated and referred to as Lessor, and Myong C. Magnuson, hereinafter designated and referred to as tenant,

WITNESSETH; THAT said lessor in consideration of the rents and covenants hereinafter mentioned, to be paid and performed by tenant, does hereby demise, lease and let unto the said tenant, and the said tenant does hereby hire and take form the said lessor, the following described premises situate in the City of Minneapolis, County of Hennepin, State of Minnesota to:wit: that portion of the building located at 117 North Washington Avenue, Minneapolis, Minnesota, currently occupied by the business known as Yoshiko's Sauna.

To Have and To Hold the above premises just as they are, without any liability or obligation on the part of said lessor of making any alternations, improvements or repairs of any kind on or about said premises or the building or buildings of which they are a part, or the equipment, fixtures, plumbing, appliances, or machinery in, upon or serving same, or the streets, alleys, areas, area-ways or passages

adjoining or appurtenant thereto, for the term of 6 l/2 years from and after the lst day of July, l989, to the 30th day of December, l995, both dates inclusive, for the following purposes and for no other purposes, to-wit: the operation of a sauna, meaning a business primarily engaged in providing both a steam bath and massage services.

And the said tenant agrees to and with said lessor to pay the lessor as rent for the above-mentioned premises the sum of fifty-four thousand six hundred ($54,600.00) in monthly payments of seven hundred ($700.00) payable in advance on the first day of each and every month for and during the full term of this lease, at the office of Le Ciel d'Or, 800 Nicollet Mall, Mpls., MN 55402.

1. This lease shall supersede the memorandum agreement between the parties, executed on or about August 25, l988.

2. As further consideration for entering into this lease, Tenant shall pay to Lessor the sum of forty thousand dollars ($40,000.00) upon execution of the lese, receipt of which is acknowledged by Lessor.

3. In the event that the authorized business under this lease becomes unlawful at the present location, or if said business is closed by governmental action prior to June 30, l989, all funds paid by

Tenant to Lessor pursuant to the preceding paragraph shall be refunded in full.

4. Upon the expiration of the present lease, Tenant, at her sole option, may renew the present lease for up to an additional 4 years at a rental not to exceed $1,400.00 per month. Should Tenant exercise this option, she must give written notice to Lessors within 60 days of the expiration of this lese. Thereafter, Tenant, at her sole option, may exercise the right to extend the terms of said lese for up to an additional 3 years, with a rental increase not to exceed 50 percent of the option rent of the preceding rental period.

5. During the period of this lease, or any extension thereof, Lessor agrees not to own, operate, manage, lease, or have any financial interest in any sauna, massage parlor, or health club facility within the City of Minneapolis.

Should Lessor retake possession of the premises, following the expiration of the term of this lease, or any extension thereof, Lessor agrees not to operate, on. the demised premises or to lease the demised premises for use as a sauna, massage parlor, or health club facility, within 7 years of the expiration of this lease, or any extension thereof.

6. Lessee MYONG C. MAGNUSON shall share the usage of the. first floor of the premises for purposes of operating a separate and distinct sauna business enterprise therein, together with UN Sit OLSON, in the same. area of the premises.

7. Lessee MYONG C. MAGNUSON shall also either pay directly to Minnegasco and the City of Minneapolis, or reimburse HELEN FISHER, on a monthly basis, one-half of the gas and water/sewer charges incurred.

8. Lessee MYONG C. MAGNUSON shall also be responsible for paying one-half of the electrical costs metered into the leased premises.

9. Lessee MYONG C. MAGNUSON shall accomplish maintenance on the air-conditioning unit except that HELEN FISHER shall be responsible for such major repairs as exceed the sum of $300.00 per repair.

10. Usage of the rear door and elevator area shall be shared with other lessees occupying the upper floors of the building on the premises.

Helen Fisher, Lessor

Dated: 10-14, 1988

Myong C. Magnuson, Tenant

Dated: 10-14, 1988.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)

)ss

COUNTY OF HENNEPIN)

Marilee Kaeder, being first duly sworn on oath, hereby deposes and says that on the 14th day of May, 1992, she served by United States mail Defendant's Notice of Removal, Answer and Counterclaim and Crossclaim of Defendant Myong Magnuson upon:

Mr. Scott Reeves

Assistant City Attorney

A-1700 Hennepin County Government Center

Minneapolis, Minnesota 55487

Mr. Stewart Perry

Attorney at Law

Norwest Bank Building

900 East Wayzata Boulevard

Wayzata, MN 55391

by mailing to them true and correct copies thereof

_____

Marilee Kaeder

Sworn and subscribed to before me this

14th day of May, 1992.

_____

Notary Public

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

CASE TYPE: Injunction

City of Minneapolis, a

municipal corporation,

FILE NO: 92-08094

Plaintiff,

vs. **REPLY TO**

COUNTERCLAIM

Helen Fisher, Un Sil Olson

aka Un Sil Berg, Myong Magnuson,

and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

City of Minneapolis, plaintiff, for its Reply to defendant Magnuson's Counterclaim, states and alleges:

I.

Denies each and every allegation of the Counterclaim and puts defendant to its full burden of proof.

II.

Affirmatively alleges that defendant's Counterclaim fails to state a claim upon which relief can be granted.

WHEREFORE, Plaintiff prays for judgment dismissing the Counterclaim, and for an award of its costs, disbursements, and attorney's fees pursuant to 42 U.S.C. Section 1988.

June 29, 1992

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiffs

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673 - 2066

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff,

NOTICE OF MOTION

vs.

Helen Fisher, Un Sil Olson, a/k/a Un Sil Berg,

and Myong Magnuson, d/b/a Yoshiko's Sauna,

Defendants. Case No. 92-8094

TO: The above-named Plaintiff, and Mr. Scott Reeves, Assistant City Attorney, A-i 700 Hennepin County Government Center, Minneapolis MN 55487, its attorney; Defendants Helen Fisher and Un Sil Olson, and Mr. Stewart Perry, Norwest Bank Bldg., 900 E Wayzata Blvd., Suite 110, Wayzata MN 55391, their attorney; and Intervenor-Defendant Suzy Kotts, and Mr. Jerrold M. Hartke, 820 Southview Blvd., Suite 100, South St. Paul MN 55075-2397, her attorney:

PLEASE TAKE NOTICE that Defendant Myong Magnuson, by the undersigned, will bring the attached motion for hearing before the

Honorable Mary Winter, Judge of the above-named Court, in her Courtroom at the Hennepin County Government Center, on July 2, 1992 at 1:30 p.m., or as soon thereafter as counsel can be heard.

Randall D.B. Tigue

2620 Nicollet Avenue

Minneapolis, Minnesota 55408

(612) 874-9903

Minn. Sup. Ct. Lic. No. 110000

June 15, 1992.

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Case No.: 92-08094

Plaintiff, Case Type: Injunction

vs.

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong

Magnuson, dba **MOTION FOR TEMPORARY**

Yoshiko's Sauna, **INJUNCTION**

Defendants.

The above named Plaintiff, by the undersigned, hereby moves this Court for an order, pursuant to Minnesota Statutes, Sections 617.80 through 617.87, granting a temporary injunction as follows, until the above-entitled action is finally resolved on its merits:

1. Enjoining and prohibiting defendants from operating, leasing to, or allowing any other person to operate Yoshiko's Sauna, in the building at 117 North Washington Avenue.

2. Enjoining and prohibiting defendants from operating or allowing the operation of any other sauna, massage parlor, rap parlor, escort service, or outcall service in the building at 117 North Washington Avenue.

3. Enjoining and prohibiting defendants from knowingly allowing any person to commit an act of prostitution, or to engage in prostitution - related activities. within the building at 117 North Washington Avenue.

4. Ordering defendants to post a bond in the sum of $50,000.00, conditioned upon their compliance with the temporary injunction in this action, and conditioned that they will immediately abate the public nuisance at 117 North Washington Avenue.

The motion is based upon the facts stated in the attached Verified Complaint, Memorandum in Support of Motion for Temporary Injunction, Affidavits of Theodore W. Wilson, Thomas C. Reid, and Edward T. Conroy, and attached exhibits.

Dated: April 24, 1992.

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

by: SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Case No.: 92-08094

Plaintiff, Case Type: Injunction

v.

Helen Fisher, Un Sil Olson **AFFIDAVIT OF**

aka Un Sil Berg, and **THEODORE W. WILSON**

Myong Magnuson dba

Yoshiko's Sauna,

Defendants.

Theodore W. Wilson, being first duly sworn, deposes and says:

1. I am employed as Court Manager for the Court Administrator, Fourth Judicial District of Minnesota.

2. I am responsible for mailing notices of conviction to owners and interested parties in nuisance actions under Minnesota Statutes, Section 617.81, subdivision 3.

3. Attached are certified copies of Fourth Judicial District Court computer records of the case histories of criminal case numbers 90-

089051 and 91-039512 regarding prostitution convictions arising from Yoshiko's Sauna.

4. Attached are true and accurate copies of notices of conviction, and accompanying cover letters, which were mailed at my direction regarding convictions for prostitution occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN.

5. At my direction, the attached Notices of Convictions were recorded with the Hennepin County Recorder.

Theodore Wilson

Subscribed and sworn to before me

this 23 day April, 1992.

Judith A. Worwa

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FIRST DIVISION, MINNEAPOLIS

Criminal File Number: 90089051

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA

STATUTE 617.81, SUBDIVISION 3

TO:

Helen C. Fisher
6520 Nordic Drive
Edina, MN 55435

Yoshiko Myong
117 Washington Ave.
Minneapolis, MN 55401

Manager, Yoshiko's Sauna
117 Washington Ave N. lst Fl.
Minneapolis, MN 55401

Myong Magnuson
117 Washington Ave. N. 1st fl.
Minneapolis, MN 55401

Un Sil Olson
6400 Barrie Road #1410
Edina, MN 55435

Occupants
117 Washington Ave.
Minneapolis, MN 55401

You are hereby notified pursuant to Minnesota Statute 617.81, Subdivision 3, that Suzy W. Kotts was convicted on March 27, 1991 of an offense described in Minnesota Statute 617.81, Subdivision 2 relating to public nuisances, to-wit, gross misdemeanor prostitution

which occurred at Yoshiko's Sauna, 117 Washington Ave N., Minneapolis, Minnesota, 55401 which address has the legal description of Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet and Property Identification Number 22-029-24-410066.

You are hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna could result in the premises being declared a public nuisance. Under Minnesota Statutes, Sections 617.80 through 617.87, the district court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivision 3, this notice will be filed with the County Recorder.

_____

Jack M. Provo, Administrator

Fourth Judicial District Court

Date 4-22-91

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Ms. Helen C. Fisher

6520 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

STATE OF MINNESOTA

DISTRICT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Myong Magnuson

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Myong:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Yoshiko Myong

117 Washington Avenue North, First Floor

Minneapolis, MN 55401

Dear Yoshiko:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/ nbe

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Un Sil Olson

Edina, MN 55435

Dear Un Sil:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Manager

Yoshiko's Sauna

First Floor

117 Washington Avenue North

Minneapolis, MN 55401

Dear Sir/Madam:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/ nbe

Enclosure

STATE OF MiNNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

April 24, 1991

Occupants

Yoshiko's Sauna

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

FIRST DIVISION MINNEAPOLIS

Criminal File Number: 91039512

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA

STATUTE 617.81, SUBDIVISION 3

TO:

Helen C. Fisher
6520 Nordic Drive
Edina, MN 55435

Myong Magnuson
117 Washington Ave. N. 1st Fl.
Minneapolis, MN 55401

Yoshiko Myong
117 Washington Ave. N. 1st Fl.
Minneapolis, MN 55401

Un Sil Olson
6400 Barrie Road #1410
Edina, MN 55435

Manager Yoshiko's Sauna
117 Washington Ave. N. 1st Fl.
Minneapolis, MN 55401

Occupants
117. Washington Ave. N. lst Fl.
Minneapolis, MN 55401

Re: Notice of Conviction, Criminal File No. 91039512,

State of Minnesota, Fourth Judicial District Court

You are hereby notified pursuant to Minnesota Statute 617.81,

Subdivision 3, that Lola Jean Ekobena Skenandore was convicted on September 19, 1991, of an offense described in Minnesota Statute 617.81, Subdivision 2, relating to public nuisances, to-wit, Prostitution, which occurred at Yoshiko's Sauna, 117 Washington Ave. N.. Minneapolis, Minnesota, 55401, which address has the legal description of Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet and Property Identification Number 22-029-24-410066.

Also, you are hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna could result in the premises being declared a public nuisance. Under Minnesota Statutes, Sections 517.80 through 517.87; the District Court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivisions 3, this notice will be filed with the County Recorder.

_____

Date: September 23, 1991 Jack M. Provo, Administrator

Fourth Judicial District Court

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Helen C. Fisher

6520 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached corrected copies of two Notices of Arrest and Seizure pursuant to Minnesota Statute Sec.617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Myong Magnuson

117 Washington Ave. N. 1st Fl.

Minneapolis, MN 55401

Dear Ms. Magnuson:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Yoshiko Myong

117 Washington Ave. N. 1st Fl.

Minneapolis, MN 55401

Dear Ms. Myong:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Un Sil Olson

6400 Barrie Road #1410

Edina, MN 55435

Dear Ms. Olson:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Manager, Yoshiko's Sauna

117 Washington Ave. N. 1st Pl.

Minneapolis, MN 55401

Dear Manager:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Occupants

117 Washington Ave. N. 1st Fl.

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, and Myong Magnuson dba Yoshiko's Sauna,

Defendants.

Case No. 92-08094

Case Type: Injunction

AFFIDAVIT OF THOMAS C. REID

Thomas C. Reid, being first duly sworn, deposes and says:

1. I am a Minneapolis police officer presently assigned to the Minneapolis City Attorney's Office as an investigator.

2. I have investigated the ownership of Yoshiko's Sauna with the following results:

a. On April 1, 1991, and again on March 24, 1992, Minnegasco furnished written records indicating that the gas account for 117 Washington Avenue North is billed to Un Sil Berg who is

listed as the subscriber-owner.

b. On March 28, 1991, and again on March 27, 1992, NSP furnished written records indicating that the electric account for 117 Washington Avenue North (1st Floor) is billed to Yoshiko Myong, 117 Washington Avenue North.

c. On March 28, 1991, and again on March 24, 1992, U.S. West furnished written records indicating that the telephone account for the business is billed to Yoshiko's Sauna, 117 washington Avenue North, Minneapolis, Minnesota 55408.

d. The trade name "Yoshiko's" at 117 Washington Avenue North was registered as an unincorporated business with the Minnesota Secretary of State on March 27, 1991, by Myong Magnuson.

e. The first floor of 117 Washington Avenue North is a commercial building and is not certified for occupancy as a dwelling unit. The upper floors contain- rented apartment units.

f. The records of the Minneapolis Water Department indicate that the water bill is sent to Un Sil Berg,117 Washington Avenue North, Minneapolis, MN 55401-1619.

g. The records of the Hennepin County Recorder and Auditor's offices indicate that the property is owned by Helen Fisher and Un Sil

Berg. Helen Fisher is the taxpayer of record according to the records of the Hennepin County Auditor. The last property tax bill was paid by check drawn on the joint business account of Helen C. Fisher and Un Sil Olson, 117 Washington Avenue North. There are no contract for deed or leasehold interests recorded against the property.

_____

Thomas C. Reid

Subscribed and sworn to
before me this 23rd day
of April, 1993.

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff, **DEFENDANT MYONG MAGNUSON'S MOTION FOR SUMMARY JUDGMENT**

vs.

Helen Fisher, Un Sil Olson,

a/k/a Un Sil Berg,

and Myong Magnuson,

d/b/a Yoshiko's Sauna,

Defendants. Case No. 92-8094

Defendant Myong Magnuson, by the undersigned, hereby moves this Court for an Order, pursuant to Rule 56.02 of the Minnesota Rules of Civil Procedure of District Courts, granting Defendant summary judgment, dismissing Plaintiff's complaint against her, in that there are no material facts in dispute and that Defendant Myong Magnuson is entitled to judgment, as a matter of law, on the following

grounds:

1. Minnesota Statutes Section 617.81-617.87 are facially unconstitutional, and unconstitutional as applied to Defendant Myong Magnuson.

a. Because the statues absolutely bind Defendants by the results of legal actions to which they are not parties and over which they had no control, the statutes deprive Defendants of property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution, and Article I, Section VII of the Minnesota Constitution.

b. The statutes are facially unconstitutional and unconstitutional as applied to Defendant Myong Magnuson, in that they violate Defendant's right to freedom of association, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

2. Plaintiff has not complied with the procedural requirements of the Nuisance Abatement Statute, precluding both temporary and permanent injunctive relief under the statute.

3. Because the nuisance in question did not occur on any portion of the premises controlled by Defendant Magnuson, Defendant

Magnuson should not be the subject of either a temporary or a permanent order of abatement.

The foregoing motion shall be based upon the affidavits, exhibits, and memorandum filed by Defendant Myong Magnuson in opposition to Plaintiff's motion for temporary injunction, and upon all of the files, records, and proceedings herein.

Randall D.B. Tigue

Attorney for Defendant

Myong Magnuson

2620 Nicollet Avenue

Minneapolis, Minnesota 55408

(612) 874-9903

Minn. Sup. Ct. Lic. No. 110000

Dated: June 15, 1992

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

CASE NO. 92-8094

STATE OF MINNESOTA)

COUNTY OF HENNEPIN)

Randall Tigue of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being first duly sworn, says that on the 15th day of June, 1992, he served the annexed:

1. Notice of Motion
2. Notice for Summary Judgment
3. Memorandum in Opposition to Plaintiff's Motion for Summary Judgment
4. Supporting Affidavit

by mailing a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota, directed to:

Mr. Richard S. Slowes

Assistant Solicitor General

525 Park Street, Suite 200

St. Paul MN 55103

Subscribed and sworn to before me this 15th day of June, 1992.

Randall D.B. Tigue

Notary Public

STATE OF MINNESOTA)

COUNTY OF HENNEPIN)

Randall D. B. Tigue of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being first duly sworn, says that on the 15th day of June, 1992, he served the annexed:

1. Notice of Motion; and

2. Notice for Summary Judgment

by mailing a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota, directed to:

Mr. Scott Reeves

Assistant City Attorney

A-1700 Hennepin County Government Center

300 So. Sixth Street

Minneapolis MN 55487

Mr. Stewart R. Perry

Attorney at Law

Norwest Bank BIdg.

900 E Wayzata Blvd.,

Suite 110 Wayzata MN 55391

Mr. Jerrold M. Hartke, Attorney at Law

820 Southview Blvd.,

Suite 100

South St. Paul MN 55075-2397

Subscribed and sworn to before me

this l5th day of June, 1992.

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff,

AFFIDAVIT OF MYONG v.

vs. **MAGNUSON**

Helen Fisher, Un Sil Olson, a/k/a Un Sil Berg,

and Myong Magnuson, d/b/a Yoshiko's Sauna,

Defendants. Case No. 92-8094

STATE OF MINNESOTA)

)SS

COUNTY OF HENNEPIN)

Myong Chon Magnuson, being first duly sworn on oath, hereby deposes and says the following:

1. Your affiant is one of the Defendants in the above-entitled matter.

2. Your affiant is also one of two tenants occupying the premises at 117 North Washington Avenue, Minneapolis, Minnesota, operating under the business name Yoshiko's Sauna."

3. Your affiant originally began occupying Yoshiko's premises pursuant to a written lease agreement, executed on August 18,1988, a copy of which is attached as Exhibit A to your affiant's answer, counterclaim, and cross claim.

4. Under the terms of that written lease agreement, your affiant had the right to occupy the premises only on alternating days. On the days in which your affiant did not occupy the premises, the premises were occupied by Kyong Ye Firnstahl.

5. On October 13, 1988, your affiant entered into an agreement with Defendant Helen Fisher, a copy of which is attached as Exhibit B to your affiant's answer, counterclaim, and cross claim. Pursuant to said agreement, your affiant purchased Defendant Helen Fisher's one-half interest in the Yoshiko's Sauna business, with said purchase to take affect on July 1,1989, following the termination of the lease to Kyong Ye Firnstahl.

6. Commencing on July 1,1989, your affiant was the exclusive tenant of Yoshiko's until August, 1990.

7. In August, 1990, Defendant Un Sil Olson, the owner of the other one-half interest in Yoshiko's attempted to assert the right to occupy the premises one-half time, much as had been the arrangement with Ms. Firnstahl.

8. Your affiant further discovered that it was Ms. Olson's intent, not to operate the business during her one-half interest herself, but rather to lease the premises one-half time to One Suzy Woo Kotts.

9. Your affiant strenuously objected to this, and, at your affiant's instruction, your affiant's attorney wrote a letter to Ms. Olson, a copy of which is attached hereto as Exhibit A asserting that since your affiant was purchasing Ms. Fisher's one-half interest in the premises, your affiant was a partner of Ms. Olson and Ms. Olson could not, under the Uniform Partnership Act, assign her interest in partnership property to Ms. Kotts, without your affiant's consent.

10. On August 21, 1990, Ms. Olson's attorney, Hosmer A. Brown, wrote to your affiant's attorney denying the existence of a partnership, and continuing to assert Ms. Olson's right to enter the business and occupy it on alternating days. See Exhibit B.

11. In response, your affiant's attorney wrote a letter to Mr. Brown, a copy of which is attached hereto as Exhibit 0, continuing to

assert your affiant's right not to have the other one half interest in the premises leased out. Your affiant was particularly concerned that Ms. Olson's prospective tenant was Suzy Woo Kotts, a person your affiant knew to have been repeatedly convicted of prostitution. Your affiant believed that leasing the premises to Ms. Kotts could jeopardize your affiant's continued ability to operate the business for precisely the reason asserted by Plaintiff in this case. In that letter, your affiant's attorney specifically wrote to Ms. Olson's attorney the following:

> "[Y]our client's prospective tenant is an individual who has been convicted on at least three occasions of prostitution. Under the provisions of Minnesota Statutes Sections 617.80-617.87, should three convictions for misdemeanor prostitution or two convictions for gross misdemeanor prostitution occur within a two-year period, the premises may be closed for all purposes for up to one year, and the personal properly therein sold. My client therefore believes that your client's prospective tenant jeopardizes my client's interest in the property."

12. After both litigation and physical violence were threatened by both sides, your affiant reluctantly agreed not to attempt to litigate her continued right to occupy the subject premises exclusively, and

consented to allow Ms. Olson to lease the subject property to Ms. Kotts, with Ms. Kotts and your affiant operating the premises on alternate days, in exactly the same arrangement that your affiant previously had with Ms. Firnstahl.

13. On the alternative days when Ms. Kotts occupied the premises, your affiant had no control over the premises whatsoever.

14. In fact, when your affiant attempted to confront Ms. Kotts over the fact that she was permitting prostitution to take place on the premises and failing to pay her share of the bills, Ms. Kotts responded by falsely claiming harassment on the part of your affiant and obtaining an ex parte temporary restraining order on February 11, 1992, a copy of which is attached hereto as Exhibit 0.

15. In response to the restraining order, your affiant and Ms. Kotts appeared before Referee Schumacher on February 19,1992, in which a stipulated order was entered, a copy of which is attached hereto as Exhibit E. Part of the order stipulated to was that "pending further of this Court, Respondent (your affiant) shall not be present at the parties' business premises, Yoshiko's Sauna, when Petitioner (Suzy Kotts) is present there.

16. The issue was finally resolved on March 12,1992, when the

court entered a mutual restraining order, restraining both your affiant and Ms. Kotts from harassing each other, a copy of said mutual restraining order is attached hereto as Exhibit F.

17. The conduct leading to all three convictions at Yoshiko's Sauna has occurred while Suzy Woo Kotts has been in exclusive control of the premises:

a. Obviously the conviction of Ms. Kotts herself occurred while Ms. Kotts was operating the premises, not your affiant.

b. The arrest of Lola Jean Ekobena occurred on June 4, 1991, on a Tuesday, in which the premises were occupied exclusively by Suzy Woo Kotts, not your affiant.

c. Likewise, Kathie Moos, arrested on December 10,1991, was arrested on the day in which the premises were occupied by Suzy Woo Kotts.

18. Your affiant has had no authority, under the lease agreement with Defendant Fisher, to control the premises on the days that Defendant Olson leases the premises to Suzy Woo Kotts, and since February, 1992, your affiant has been under a restraining order from this Court to that effect.

19. Your affiant executes this affidavit in opposition to Plaintiff's

motion for a temporary injunction, as to your affiant.

Further your affiant sayeth not.

_____

Myong Chon Magnuson

Sworn to and subscribed before me

this 18th day of May, 1993.

_____

Notary Public

EXHIBIT A

RANDALL D.B. TIGUE

Attorney at Law

Nicollet Avenue Professional Building

2620 Nicollet Avenue South

Minneapolis, Minnesota 55408

August 7, 1990

Ms. Un Sil Olson

6400 Barrie Road

Apartment 1410

Edina, Mn

RE: Yoshiko's Sauna

117 North Washington

Minneapolis, MN

Dear Ms. Olson:

Please be advised that I represent Myong Magnuson, in the matter concerning your contemplated plans to lease the above-described premises.

As I understand the situation, prior to Ms. Magnuson 5 assuming an interest in the premises, you operated Yoshiko's Sauna under an agreement of partnership with one Helen Fisher. On or about

October 13, 1988, Ms. Fisher conveyed here interest in your partnership agreement to my client, Myong Magnuson. You specifically consented to such a conveyance. I am enclosing herein a copy of the agreement between Helen Fisher and Myong Magnuson, consented to by you. As a result, Ms. Magnuson assumed the rights and liabilities of Ms. Fisher under her partnership agreement with you.

It is now my understanding that you intend to lease your interest in the partnership property, at 117 North Washington, to a third party, against my client's wishes, and without my client's consent. please be advised that such contemplated conduct is in direct violation of the Uniform partnership Act, in particular, Minnesota Statutes Section 323.24(2), which provides:

> "[A] partner's right in specific partnership property is <u>not</u> assignable except in connection with the assignment of the rights of all partners in the same property (emphasis supplied) ..."

As a result, the law does not permit you to assign, by sale, lease, or otherwise, your interest in the specific property of the partnership, without the consent of my client, who has succeeded to

your partner's interest. I have instructed my client not to recognize or permit the lease to take place and to insist on continued possession of the premises. If necessary, my client is prepared to litigate to enforce her rights under the Uniform Partnership Act.

Yours truly,

Randall D.B. Tigue

Attorney at Law

RDBT/mk

c: Ms. Myong Magnuson

Yoshikos

EXHIBIT B

HOSMER A. BROWN

ATTORNEY AT LAW

3801 WEST 50TH STREET

MINNEAPOLIS, MINNESOTA 55410-2074

(612) 927-8837

August 21, 1990

Randall D. B. Tigue

Attorney at Law -

2620 Nicollet Avenue South

Minneapolis, MN 55408

Dear Mr. Tigue:

I have your letter of August 7, 1990 addressed to Ms. Un Sil Olson re: Yoshiko's Sauna. I am representing Un Sil Olson.

You state that your client, Mr. Magnuson, is operating in partnership with my client pursuant to an assignment from Mrs. Fisher of Mrs. Fisher 's interest in the partnership.

I am unaware of any partnership agreement, and if you have one I would appreciate a copy of it, or if it is a verbal agreement, I'd appreciate the facts you are relying upon. Have partnership tax

returns been filed, is there a partnership tax TD number, are there any employment returns showing the partnership? I assure you I am not attempting to be contentious, but it was my understanding that Mrs. Fisher, Ms. Olson and their successors had operated the business as distinct co-owners, and that your client's agreement leasing Ms. Olson's one-half interest will terminate on August 31st of this year. If we are unable to reach an accommodation with you and your client, then Ms. Olson will reenter the business and operate her one-half on alternate days as was their custom. I would appreciate receiving your basis for the partnership.

Very truly yours,

Hosmer A. Brown

HAB:vh

EXHIBIT C

Randall D. B. Tigue

Attorney at Law

Nicollet Avenue Professional Building

2620 Nicollet Avenue South

Minneapolis, Minnesota 55408

(612) 874-9903

August 30, 1990

Mr. Hosmer Brown

Attorney at Law

3801 West 50th Street

Minneapolis, MN 55410

BE: Yoshiko's Sauna

Dear Mr. Brown:

I am In receipt of your letter regarding Un Sil Olson and her plans to lease out her half interest at Yoshiko 's.

In response to your specific inquiry, there is no written partnership agreement, but it is absolutely clear that your client and Helen Fisher had between them a verbal partnership agreement jointly to operate Yoshiko's Sauna, and share the proceeds thereof. As I am certain you are aware, the Uniform Partnership Act, in particular, Minnesota

Statutes Section 323.02, Subd. 8 defines the term "partnership" as "an association of two or more persons to carry on as co-owners of a business for profit." Clearly, Ms. Fisher and your client operated Yoshiko's as co-owners for profit. They shared the proceeds, and jointly operated the business.

It is also equally clear that, totally apart from the requirements of the Uniform Partnership Act, each required the consent of the other to sell or lease an interest in the partnership property, to-wit: the Yoshiko's Sauna location. Both my client's lease with Helen Fisher and her subsequent purchase of Helen Fisher's partnership interest required the consent of your client. My client is insisting upon nothing more than the exercise of that same right, when your client decides to lease the partnership premises.

With respect to your alternative proposal that your client personally operate the business for half the period of time in question, we have two immediate problems with that:

First of all, your client has repeatedly told my client she will not personally operate the business herself. Rather, she desires to lease it out to another individual. My client is unwilling to abandon the premises for half the period of time, with the knowledge that your

client intends to lease the premises. Secondly, your client's prospective tenant is an individual who has been convicted on at least three occasions of prostitution. Under the provisions of Minnesota Statutes Sections 617.80 - 617.87, should three convictions for misdemeanor prostitution or two conviction for gross misdemeanor prostitution occur within a two-year period, the premises may be closed for all purposes for up to one year, and the personal property therein sold. My client therefore believe that your client's prospective tenant jeopardizes my client's interest in the property.

Secondly, and more importantly, I have just learned from my client that back in June of this year, your client verbally agreed to continue my client's lease for a period of one year after the expiration at the end of August, 1990. Your client even gave a handwritten note to that effect, a copy of which I am enclosing herein. IN that note, written on or about June 25, 1990, your client requested the sum of $7,200.00 on or before August 1, 1990, and a subsequent $7,800.00 in cash after six months. Your client requested an initial deposit of $2,000.00 against the $7,200.00. My client gave your client a cashier's check, a copy of which is enclosed herein, which your client received, and kept, promising my client rental on the premises.

It is my understanding that a dispute then arose when my client objected to the cash portion of the payment, in that she did not wish to assist your client in the avoidance of federal and state income tax on the proceeds. It is our position that our clients entered into a binding contract to continue the lese for an additional year, and your client accepted money on those conditions.

Accordingly, I am enclosing herein two additional checks payable to your client, one in the sum of an additional $5,200.00, as promised, and a second $7,800.00 to cover the second installment, as set forth in the note.

Please be advised that it is our position that we have a valid one year extension of the lease, agreed to by your client. We will resist any attempt by your client to abrogate that agreement.

Yours truly,

Randall D.B. Tigue

Attorney at Law

RDBT/mk

c: Ms. Myong Magnuson

EXHIBIT D

In Re the Matter of: **ORDER FOR HARASSMENT**

Suzy Woo Kotts **HEARING AND EX PARTE**

Petitioner **TEMPORARY RESTRAINING ORDER**

and

Myong C. Magnuson, HA 92-3061

Defendant.

TO: Myong C. Magnuson, THE ABOVE-NAMED RESPONDENT.

Upon the Affidavit and Petition for a Restraining Order and upon all of the records and proceedings in the matter: IT IS HEREBY ORDERED that you must personally appear and show cause, before the above-named Court, at Room 1253, Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487, on February 19, 1992, at 10:30 a.m., or as soon thereafter as the same can be heard, why the relief sought by the Petitioner in the Petition for a Restraining Order should not be granted.

The Court finds reasonable grounds to believe that Respondent has engaged in harassment, which is set forth in the Affidavit and

Petition herein.

Respondent shall cease and avoid the harassment of Suzy Woo Kotts Harassment means repeated, intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security or privacy of another.

Respondent shall not do any of the following

NOTICE

The following specific conduct will constitute a violation of this order. Respondent shall have no contact with Petitioner in person by telephone or any other agent.

This order will be effective until the hearing scheduled above. The Court may extend the duration of this order upon the written consent of the parties, or for an additional seven day period upon a showing that Respondent has not been served despite the exercise of due diligence.

A peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated this order.

Failure of the Respondent to appear at the scheduled hearing may result in the granting of the relief sought by the Petitioner as a default

matter. Failure to appear WILL NOT be a defense to prosecution for violation of any part of this order. Failure of the Petitioner to appear will be grounds for dismissal of this action.

The Court Administrator shall send a copy of this Temporary Restraining Order to the Minneapolis Police Department.

VIOLATION OF THIS ORDER IS A MISDEMEANOR AND MAY RESULT IN IMPRISONMENT OF UP TO NINETY (90) DAYS.

Dated: February 11, 1992

_____

Judge

STATE OF MINNESOTA

COUNTY OF HENNEPIN

Suzy Woo Kotts,

4915 Humboldt Avenue

Minneapolis, Minnesota

Petitioner

and

Myong C. Magnuson,

Respondent

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

PETITIONER'S AFFIDAVIT AND PETITION FOR HARASSMENT ORDER

HA 92-3061

The undersigned Petitioner, being sworn on oath states that:

1. I am the Petitioner in this action, which is a Petition for restraining order. I am the victim of the harassment described in this Petition. This Affidavit is given in support of my Petition under Minn. Stat. 609.748.

2. That my date of birth is 1-27-36 and Respondent's date of birth 11-24-56. The parties are co-owners of a business.

3. Pursuant to Minnesota Statutes Section 609.748, Subd. 1, the following are specific acts of harassment committed by Respondent. Harassment means repeated, intrusive, or unwanted acts, words, or

gestures that are intended to adversely affect the safety, security, or privacy of another.

Petitioner is scheduled to work Mondays, Tuesdays and Fridays with alternating Sundays Respondent works Wednesdays, Thursdays and Saturdays with alternating Sundays, since September 1990, Respondent has locked Petitioner out of the building six times. The lat time was February 9, 1992. Respondent will hook the inside door so Petitioner cannot get in when it is her day to work. Police have been called many times and Respondent will say that it is her day to work.

4. Based on this Affidavit, I request that an Ex Parte Temporary Restraining Order be issued granting me the following relief: and I request a Restraining Order be issued at the hearing.

That Respondent cease or avoid the harassment of Suzy Woo Kotts

That Respondent have no contact with Suzy Woo Kotts in person or by telephone or any other means or person.

and I request a Restraining Order be issued at the hearing.

Subscribed and sworn to

before me on February 11, 1992 _____

Suzy W. Kotts

EXHIBIT E

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Suzy Woo Kotts, **STIPULATION AND ORDER**

Petitioner **FOR CONTINUANCE**

and HA 92-3061

Myong C. Magnuson,

Respondent

STIPULATION

It is agreed by the undersigned parties that the Harassment hearing scheduled for February 19, 1992, be continued to March 12, 1992, at 2:00 p.m., Room 125.

Suzy Kotts Myong Magnuson

Petitioner Respondent

FINDINGS AND ORDER

Petitioner appeared pro se. Respondent was present and was represented by Mary Westerman, Esq.

The above-entitled matter came on for hearing before Referee Schumaker on February 19, 1992.

Based upon the stipulation of the parties and all of the files,

records and proceedings herein,

THE COURT FINDS:

That all parties are present and agree to a continuance of the Harassment Hearing.

IT IS ORDERED:

1. That the above-entitled matter is continued to March 12, 1992, at 2:00 p.m., Room 1253C.

2. That pending further Order of this Court, Respondent shall not be present at the parties' business premises, Yoshiko's Sauna, when, Petitioner is present thereto, Respondent may, however, contact Petitioner by telephone.

_____

REFEREE

Dated: 2/21/92

EXHIBIT F

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Suzy Woo Kotts,

Petitioner **MUTUAL RESTRAINING**

and **ORDER**

Myong C. Magnuson, File No. HA 92-03061

Respondent.

The above-entitled matter came on for hearing before the undersigned, a Judge of District Court on March 12, 1992 upon a motion by Petitioner for the relief specified in the Petition for a RestraIning Order filed herein.

Now, therefore, based upon the evidence adduced and upon all the files, records, and proceedings herein.

1. Petitioner has filed a Petition for a Restraining Order.

2. Respondent has been served with a copy of the Temporary Restraining Order and Respondent has been given notice of the time and place of the hearing on the Petition for Restraining Order.

3. Petitioner and Respondent have agreed to the issuance of

a Mutual Restraining Order and the following Mutual Restraining Order shall issue.

IT IS HEREBY ORDERED:

1. The-parties shall cease or avoid the harassment cf each other. The parties shall not do any of the following:

NOTICE

THE FOLLOWING SPECIFIC CONDUCT WILL CONSTITUTE A VIOLATION OF THIS RESTRAINING ORDER.

a. Any repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of each other.

b. Any contact with each other in person, by telephone,. or by other means or persons.

2. The parties shall cease or avoid the harassment of each other,

The parties shall not do any of the following:

NOTICE

THE FOLLOWING SPECIFIC CONDUCT WILL CONSTITUTE A VIOLATION OF THIS RESTRAINING ORDER.

a. Any repeated, intrusive, or unwanted acts, words, or

gestures that are intended to adversely affect the safety, security, or privacy of each other.

b. Any contact with -each.other in person, by telephone,. or by other means or persons.

3. This Mutual Restraining Order shall remain in effect until March 12, 1994.

4. The Court Administrator shall send a copy of this Mutual Restraining Order to the Hennepin County Sheriff's department and the Minneapolis Police Department which have jurisdiction over the residence of the applicant pursuant to Minn. Stat. 609.784.

5. VIOLATION OF THIS MUTUAL RESTRAINING ORDER IS A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR UP TO 90 DAYS OR A FINE OF UP TO $700 OR BOTH.

6. A PEACE OFFICER MUST ARREST WITHOUT WARRANT AND TAKE INTO CUSTODY THE PETITIONER OR RESPONDENT IF THE PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THAT PERSON HAS VIOLATED THIS MUTUAL RESTRAINING ORDER.

The foregoing facts were found

by me after due hearing and the foregoing order thereon is recommended.

Findings of Fact and Order approved as of date heard.

Referee of District Court

Judge of District Court

Dated:Dated: March 12, 1992

(3)

SUPREME COURT OF THE UNITED STATES

October Term, 1993

No.

Supreme Court, U.S.
FILED

931261 JAN 28 1994

OFFICE OF THE CLERK

Myong Magnuson, d/b/a
Yoshiko's Sauna,

Petitioner,

vs.

City of Minneapolis,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II

Randall D.B. Tigue
Attorney for Petitioner
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903

103pp

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation,Type Case: Nuisance

Plaintiff, - File No: 92-08094

vs.

Helen Fisher, Un Sil

aka Un Sil Berg, and Myong

Magnuson dba Yoshiko's Sauna,

Defendants.

and

Un Sil Olson and Helen Fisher,

Third-Party Plaintiffs,

vs.

Suzy Woo Kotts,

Third-Party Defendant.

NOTICE OF MOTIONS AND MOTIONS TO DISMISS, DECLARE MINNESOTA STATUTES, SECTIONS 617.80 ET SEQ. UNCONSTITUTIONAL, OR IN THE ALTERNATIVE GRANT DEFENDANT OLSON'S MOTI0N TO OBTAIN RESTITUTION OF 117 NORTH WASHINGTON AVENUE AND EVICT SUZY KOTTS PURSUANT TO MINNESOTA STATUTES SECTION 617.85

To: City of Minneapolis and its attorney, Scott Reeves, A-1700 Government Center, 300 South Sixth Street, Minneapolis, MN 55487; Myong Magnuson and her attorneys Randall Tigue, Esq., 2620 Nicollet Avenue, Minneapolis, MN 55408; and Suzy Kotts and her attorney, Jarrold Hartke, Esq., 820 Southview Boulevard, Suite 100, South St. Paul, MN 55075-2397; Hubert H. Humphrey, III, Attorney General of the State of Minnesota, 102 State Capitol, St. Paul, MN 55155.

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendants and Third-Party Plaintiffs Fisher and Olson, above-named, through their undersigned attorneys, will bring the following Motions on for hearing before the Honorable Mary Winter, Judge of the above-named Court, at the Hennepin County Government Center, City of Minneapolis, State of Minnesota on the 2nd day of July, 1992 at 1:30 p.m..

MOTIONS

1. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(b), Defendants Fisher and Olson move the Court for its order dismissing Plaintiff's Complaint for lack of personal jurisdiction Defendants.

2. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(d), Defendants Fisher and Olson move the Court for its order dismissing Plaintiff's Complaint for insufficiency of service of process.

3. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(a), Defendants Fisher and Olson move the Court for lack of subject matter jurisdiction.

4. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(d), Defendants Fisher and Olson move the Court for its order dismissing Plaintiff's Complaint for failure to state a claim upon which relief can be granted.

5. Pursuant to Minnesota Statutes, Section 617.85 and Rule 115.03, General Rules of Practice, Defendants and Third-Party Plaintiffs alternatively move the Court for its Order compelling Defendant Suzy Kotts to vacate the premises at 117 North Washington Avenue, in the City of Minneapolis, State of Minnesota and surrender the premises to Third-Party Plaintiff Olson.

Said Motions are based upon all files, records and proceedings herein and upon the Memorandum of Law and Affidavits submitted.

DATED: June 15, 1992

PERRY, PERRY & PERRY

By: Stewart R. Perry (#8503)
Shawn M. Perry (#185000)
Shane C. Perry (#203907)
Attorneys for Third-Party
Plaintiff Olson
Norwest Bank Building
Suite 110
900 East Wayzata Boulevard
Wayzata, Minnesota 55391

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Type Case: Nuisance

Plaintiff, File No: 92-08094

vs.

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong

Magnuson dba Yoshiko's Sauna,

Defendants.

and **AFFIDAVIT OF UN SIL OLSON**

Un Sil Olson and Helen Fisher,

Third-Party Plaintiffs,

vs.

Suzy Woo Kotts,

Third-Party Defendant.

STATE OF MINNESOTA)

)ss

COUNTY OF HENNEPIN)

Affiant, being first duly sworn under oath states as follows:

1. Affiant is Un Sil Olson and makes this affidavit in support of her motions to dismiss or alternatively to evict Suzy Kotts.

2. Affiant began operating Yoshiko's Sauna in 1974 with her partner Helen Fisher. Affiant and Fisher each owned a 50% interest in the business and property.

3. The upper two floors of the property contain residential apartments. The lower floor is leased to Yoshiko's Sauna, a lawful commercial business.

4. Yoshiko's offered saunas and massage from the beginning. Prior to opening Yoshiko's, Affiant obtained the necessary permit from the City.

5. In 1988, Fisher sold her 50% interest in Yoshiko's Sauna and leased her 50% interest in the premises to Myong Magnuson.

6. In 1990, Affiant leased her 50% interest in Yoshiko's Sauna and 50% interest in the premises to Suzy Kotts.

7. Affiant received the notice of conviction relating to Suzy Kotts.

After receipt of the notice, Affiant contacted Kotts and told her that she did not want any trouble. Kotts persuaded Affiant that there would be no more trouble.

8. Affiant did not receive the second notice of conviction for prostitution. Further, Affiant has kept all her notices and papers and upon review of those documents does not find any such notice.

9. The City's Summons, Complaint, and attachments in support of the City's motion for injunction was the first time Affiant had notice of the second conviction.

10. Affiant has not acknowledged service of the Summons and Complaint. These documents were not accompanied by a pre-paid return addressed envelope or any notice of acknowledgment of services.

11. After retaining counsel, Kotts was requested to leave the premises for violation of the terms of her lease agreement.

12. Affiant lives off of the rental income generated by her leases and attends a South High school program for adults to obtain her high school diploma.

FURTHER YOUR AFFIANT SAITH NOT.

_____

Un Sil Olson

Subscribed and sworn to before

me this 15th day of June, 1992.

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff, File No. MX 92-8094

vs. **ORDER**

Helen Fisher, Un Sil Olson, f/k/a Un Sil Berg, and Myong Magnuson and Suzy Kotts d/b/a Yoshiko's Sauna,

Defendants.

The above-entitled matter came before the Honorable Mary Davidson Winter, Judge of District Court, on the 13th day of July, 1992.

Scott Reeves, Assistant Minneapolis City Attorney, appeared as counsel for and on behalf of the Plaintiff. Shane C. Perry, Attorney at Law, appeared as counsel for and on behalf of Defendants Fisher

and Olson. Randall D.B. Tigue, Attorney at Law, appeared as counsel for and on behalf of Defendant Myong Magnuson. Jerrold M. Hartke, Attorney at Law, appeared as counsel for and on behalf of Defendant Suzy Kotts.

THE COURT FINDS:

1. The Plaintiff, City of Minneapolis, seeks a temporary injunction against Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, under the provisions of Minn. Stats. Sections 617.80 through 617.87.

2. Plaintiff, City of Minneapolis, is a municipal corporation organized under the laws of the State of Minnesota. 3.The property located at 117 Washington Avenue North, Minneapolis, is legally described as:

The Northwesterly 22 feet of Lot 8, Block 55, town of Minneapolis addition.

Defendants Helen Fisher and Un Sil Olson a/k/a Un Sil Berg own this property as tenants in common. Helen Fisher is the taxpayer of record.

4. Myong Magnuson registered the name "Yoshiko's[11] as an unincorporated business trade name with the Minnesota Secretary of State as of March 21, 1991. Myong Magnuson operates Yoshiko's on

Wednesdays, Thursdays, Saturdays, and alternating Sundays pursuant to her lease with Helen Fisher. Suzy Woo Kotts operates Yoshiko's on Mondays, Tuesdays, Fridays, and alternating Sundays pursuant to her lease with Un Sil Olson.

5. Counsel for Defendants argue that since the arrests for prostitution which support the City's motion arose on Tuesdays, that if the Court has authority to issue a temporary injunction, it should only enjoin Kotts' portion of the operation.

6. Counsel for Defendants further argue that the applicable statutes are unconstitutional.

7. Within two years prior to the commencement of this action there have been two criminal convictions for acts of prostitution committed at Yoshiko's Sauna which qualify to establish that the premises are a nuisance as defined in Minn. Stat. S617.81:

(a) Defendant: Suzy W. Kotts

H.C.D.C. File No. 90-089051

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 11-27-90

Date of Conviction: 3-27-91

Notice of Conviction: 4-24-91

Category: Gross Misdemeanor

(b) Defendant: Lola Jean Skenadore a/k/a Ekobena

H.C.D.C. File No. 91-039512

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 6-4-91

Date of Conviction: 9-19-91

Notice of Conviction: 9-23-91

Category: Misdemeanor

8. Notice of the above-described convictions has been mailed by the Hennepin County District Court Administrator to the owners of the building and to interested parties.

9. Since sending the statutory notices to Yoshiko's, there have been two arrests for prostitution, evidencing ongoing unlawful conduct despite the notices.

10. This matter came on for hearing on July 13, 1992 pursuant to an Order to Show Cause continued to that date by agreement of counsel. Each side was given additional time to submit written legal arguments.

CONCLUSIONS OF LAW:

1. The subject property is a "building", as that term is defined in

Minn. Stat. S617.80, Subd. 2.

2. Defendants Fisher and Olson are "owners" as that term is defined in Minn. Stat. S617.80, Subd. 7.

3. Magnuson and Kotts are "interested parties" as defined by Minn. Stat. S617.80, Subd. 8.

4. The operation of Yoshiko's Sauna at 117 Washington Avenue North constitutes a "public nuisance" as defined by Minn. Stat. ~617.80, Subd. 2(1).

5. The Court Administrator filed notice of the prostitution convictions with the Hennepin County Recorder and provided notice of the prostitution convictions to the owners of the property and to interested parties as required by Minnesota Statutes.

Suzy Kotts was in the Workhouse at the time and had gone on record as having renounced prostitution forever. Her interest in the business was not known to the City.

6. Minn. Stats. 617.80 through 617.87 are not unconstitutional.

7. Plaintiff is entitled to entry of a temporary injunction pursuant to Minn. Stat. §617.82.

NOW, THEREFORE, IT IS ORDERED:

1. Plaintiff's motion for a temporary injunction is granted.

Plaintiff is exempted from filing a bond per Minn. Stat. §574.18.

2. Defendants Fisher, Olson, and Magnuson and Suzy Kotts, Third-Party Defendant, are enjoined from the operation of Yoshiko's Sauna at 117 Washington Avenue North, Minneapolis, Minnesota, until further order of the Court.

BY THE COURT:

DATED: September 8, 1992

Judge of District Court

MEMORANDUM OF LAW

Defendants challenge Minn. Stats. §617.80-87 on the grounds that since they were not able to participate in the court cases which resulted in the prostitution convictions which triggered implementation of the public nuisance statute, they have been denied due process of law. This position was argued to the Federal District Court and the Eighth Circuit in Hvamstad v. Suhler, 727 F.Supp. 511 (D. Minn. 1989); 915 F.2d 1218 (8th Cir. 1990) and rejected.

The arguments made by Defendants regarding their rights of association have not been accepted by courts in this jurisdiction or elsewhere and the case law cited is inapplicable to the facts of this case. There is no constitutional protection for an association for business purposes.

Defendants argue that to close the entire operation punishes Magnuson unjustly for the sins of Kotts, since the violations occurred on Kotts' days of the week. This argument exalts form over substance. Kotts and Magnuson are running one business, Yoshiko's, in one physical plant, using the same equipment, telephone, furniture, heat, electricity, and, in some instances, staff.

They cannot be construed as separate. In addition, it is not true

that the behavior in question all occurred under Kotts' control.

Defendants' argument that service was insufficient fails because it would require the City to serve known and unknown owners and parties in interest, an impossible task and not intended by the legislature. The purpose behind service is notice. All players in this game received notice.

The statute is valid, service was proper, Yoshiko's is one business, and a temporary injunction against it should issue.

MDW

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation.

File No.: 92-08094

Case Type: Injunction

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, Myong Magnuson, and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

NOTICE OF MOTION AND MOTION FOR FURTHER RELIEF

NOTICE OF MOTION

PLEASE TAKE NOTICE that on October 20, 1992, at 9:00 a.m. in Room C-701 Hennepin County Government Center Plaintiff City of Minneapolis will bring on for hearing the attached Motion for Further Relief before the Honorable Mary D. Winter, Judge of District Court.

MOTION FOR FURTHER RELIEF

Plaintiff City of Minneapolis moves the court for further relief in the form of a more detailed temporary injunction to insure that the Defendants neither operate the business at 117 North Washington Avenue, nor allow others to operate the business, whether under the name Yoshiko's or some other name.

Plaintiff requests that the court:

(1) Issue Plaintiff's original Proposed Order filed with its Motion for Temporary Injunction;

(2) Order Defendants to post a bond conditioned upon compliance with the order;

(3) Order all four Defendants to appear in person before the court within three days to verify compliance with the court's order, and;

(4) Authorize the Minneapolis Police Department to enter the business at 117 North Washington Avenue, remove persons found to be working therein, and secure the premises against further operation.

Dated: October 8, 1992

ROBERT J. ALFTON

City Attorney

by

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Hennepin County

Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Case Type: Injunction

City of Minneapolis, a

municipal corporation,

FILE NO: 92-08094

Plaintiff,

SECOND

vs. **AFFIDAVIT OF**

THEODORE W. WILSON

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong Magnuson,

and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

____ Theodore W. Wilson, being first duly sworn, deposes and says:

1. I am employed as Court Manager for the Court Administrator,

Fourth Judicial District of Minnesota.

2. I am responsible for mailing notices of conviction to owners and interested parties in nuisance actions under Minnesota Statutes, Section 617.81, subdivision 3.

3. Attached is a certified copy of the Fourth Judicial District Court computer record of the case history of criminal case number 91-091402 regarding a prostitution conviction arising from Yoshiko's Sauna.

4. Attached are true and accurate copies of notices of conviction, and accompanying cover letters, which were mailed at my direction regarding the above-referenced conviction for prostitution occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN.

5. At my direction, the attached Notices of Conviction were recorded with the Hennepin County Recorder.

_____

THEODORE W. WILSON

Subscribe and sworn to before
me this lst day of June

_____

Notary Public

CASE 3 91091402

MOOS KATHIE LEE (T) GIP # 00407140

3237 5TH AVE S UPPER DOB: 5/12/67

MPLS MN 55407 RACE: 7 SEX: F

DL: MN M266461427361

****

******91071401 BLO DORMANT BAIL 000.00

M SEX CRIMES 12/10/91 DEF: MALOCKO, RICHARD J

MPLS MPLS PROG: HALBERT, GREG

CT PROSTITUTION

12/17/92 17;17 CLERICAL

CT: CITATION/FILED

NO BAIL REQUIRED

01/30/92 07:00 OCM SET: ARR OCCRD: ARR JUDGE WINTER, M

FOUND ELIGIBLE FOR PD/OUT CUSTODY

CT ARRAIGNED

CT PLEAD NOT GUILTY

CT JURY TRIAL DEMANDED

02/26/92 07:30 PRE SET: PRLH OCCRD:

PRLH JUDGE ALTON, A

CT PRE-TRIAL/HELD

CT ARRAIGNED

CT PLEAD NOT GUILTY

CT JURY TRIAL DEMANDED

03/03/92 00:31 CLERICAL

MOTION/FILED

TO SUPPRESS

AFFIDAVIT OF SERVICE FILED BY DEFN

04/02/92 07:15 TRL OCT JTR OCCRD NAPD JUDGE LEVY

BENCH WARRANT ORDERED

BAIL ORDERED $1,000.00

04/02/92 15:00 OATCH SET DATCH OCCRD DATCH

BENCH WARRANT/ISSUED

05/07/92 00:24 CLERICAL

BENCH WARRANT RETURNED

05/07/92 07:00 TCR SET: APPDW OCCRD: PL JUDGE OLEISKY

FOUND ELIGIBLE FOR PD/IN CUSTODY

PD E. ROGEN APPEARING

CT ARRAIGNED

CT PLEAD GUILTY

CT SENTENCED

FINE OF $25.00

AND SERVE 10 DAYS AT ADF

10 DAYS AND TIME STAYED FOR 001 YEARS

$2.50 SURCHARGE

05/07/92 BATCH SET: BATCH ORDERED: BATCH

CT COMPUTER GENERATED FEES TAXED $5.00

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

May 26, 1992

Suzy Kotts

5504 Candy Cove Trail

Prior Lake, MN 55372

Dear Ms. Kotts:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

May 26, 1992

Occupants

117 Washington Avenue N.

First Floor

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

May 26, 1992

Helen C. Fisher

6521 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

FIRST DIVISION, MINNEAPOLIS

Criminal File Number: 91091402

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA STATUTE

617.81, SUBDIVISION 3

TO:

Helen C. Fisher
6521 Nordic Drive
Edina, MN 55435

Un Sil Olson
6400 Barrie Road #1410
Edina, MN 55435

Myong Magnuson
117 Washington Ave.
First Floor
Minneapolis, MN 55401

Suzy Kotts
5504 Candy Cove Trail
Prior Lake, MN 55372

Business Owner	Occupants
Yoshiko's Sauna	117 Washington Ave. N.
117 Washington Ave. N.	First Floor
First Floor	Minneapolis, MN 55401
Minneapolis, MN 55401	

RE: Notice of Conviction, Criminal File No. 91091402 State of Minnesota, Fourth Judicial District

You are hereby notified pursuant to Minnesota Statute 617.81, Subdivision 3, that Kathie Lee Moos was convicted on May 7, 1992 of an offense described in Minnesota Statute 617.81, Subdivision 2, relating to public nuisances, to-wit, Prostitution, which occurred at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN 55401, which address has the legal description of "Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet" and Property Identification Number 22-029-24-410066.

You are also hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna, 117 Washington Avenue North,

Minneapolis, MN 55401 could result in the premises being declared a public nuisance. Under Minnesota Statutes 617.80 through 617.87, the District Court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivision 3, this notice will be filed with the County Recorder.

Jack M. Provo, Administrator

Fourth Judicial District

Date: May 20, 1992

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation.

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, Myong Magnuson, and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

File No.: 92-08094

Case Type: Injunction

THIRD AFFIDAVIT OF EDWARD T. CONROY

_____ Edward T. Conroy, being first duly sworn, deposes and says:

1 I am a lieutenant in the Minneapolis police Department and the supervisor of the Vice Unit.

2. Since the court order in this case dated September 8, 1992, the Vice Unit has periodically checked yoshiko's Sauna to verify compliance with the order. On September 18, 1992, September 22, 1992, and October 2, 1992, vice officers posing as customers have

entered Yoshiko's and observed that the establishment is open and doing business as usual. Attached are copies of memoranda generated by the Vice Unit concerning the incidents referred to above.

3 Vice officers have also observed that Yoshiko's is displaying a sign identifying the business by a different name. However, nothing has changed in its operation. It therefore appears that the owners and operators of the business are attempting to evade the court order by changing the name of the business.

4. On September 24, 1992, another conviction for prostitution occurring in Yoshiko's Sauna was obtained after a jury trial. The details are as follows:

Defendant: Frances Tamel Brown

Court File No.: 92-023758

Date of Offense: 3/19/92

Date of Conviction: 9/24/92 Charge:

Prostitution Sentence: 90 days stayed 1 year.

Subscribed and sworn to

before me this 8th day _____

of October, 1992. Edward T. Conroy

_____

Notary Public

My commission expires:

INTEROFFICE COMMUNICATION

MINNEAPOLIS POLICE DEPARTMENT

Date: October 5th,1992

To: Scott Reeves, Assistant City Attorney

From: Lt. Conroy, Vice Unit

Subject: Yoshiko's Sauna, 117 No. Washington

On 10/2/92 at 2100 hours, officer Von Lehe entered above sauna and rang the bell. About 2 minutes later he was met by an Asian female who opened the door and asked him "would you like a massage". Officer Von Lehe looked at the prices on the wall which said Massage $40.00 + $3.00 tax, Exchange $50.00 + $3.50 tax. Officer Von Lehe told her he had to get more money and left.

INTEROFFICE COMMUNICATION

MINNEAPOLIS POLICE DEPARTMENT

Date: September 23rd, 1992

To: Scott Reeves, Assistant City Attorney

From: Lt. Conroy, Vice Unit

Subject: Yoshiko's Sauna, 117 No. Washington

On 9/22/92 at 0035 hours, officer Von Lehe of the Vice Unit entered Yoshiko's Sauna. He was met by an Asian female and was asked if he wanted a massage. She quoted prices as $40.00 and $50.00. Officer Von Lehe told her he didn't have enough money and left.

INTEROFFICE COMMUNICATION

MINNEAPOLIS POLICE DEPARTMENT

Date: September l8th, 1992

To: Scott Reeves, Assistant City Attorney

From: Sgt. Jacobson, Vice Unit

Subject: Yoshiko's Sauna, 117 No. Washington

In response to your request that we check the above business to see if they were still open and operating, we entered the business on 12/18/92 at 0005 hours. A white blond female let me in and stated a massage was $40.00 and for $50.00 I could massage her. I then left the business.

This is to inform you that Yoshiko's sauna is in fact open for business.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

File No.: 92-08094

Case Type:Injunction

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, Myong Magnuson, and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

THIRD AFFIDAVIT OF THEODORE W. WILSON

WILSON

Theodore W. Wilson, being first duly sworn, deposes and says:

1. I am employed as Court Manager for the Court Administrator, Fourth Judicial District of Minnesota.

2. I am responsible for mailing notices of conviction to owners and interested parties in nuisance actions under Minnesota Statutes, Section 617.81, subdivision 3.

3. Attached is a certified copy of the Fourth Judicial District Court

computer record of the case history of criminal case number 92-023758 regarding a prostitution conviction arising from Yoshiko's Sauna.

4. Attached are true and accurate copies of notices of conviction, and accompanying cover letters, which were mailed at my direction regarding the above-referenced conviction for prostitution occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN.

5. At my direction, the attached Notices of Conviction were recorded with the Hennepin County Recorder.

Subscribed and sworn to before me this 19th day of November, 1992.

_____

Notary Public _____

THEODORE W. WILSON

DATE/TIME PREPARED:

HENNEPIN COUNTY CRIMINAL COURTS

CASE HISTORY

10/20/92 15:34

CASE # 92023758

BROWN, FRANCES TAMEL (T) SIP# 00499770

4525 4TH ST S DOB: 11/29/64

MINNEAPOLIS MN 55409 RACE: SEX: F

DL: MN B650261785911

****

92023758 NBR DORMANT BAIL:

M SEX CRIMES 03/19/92 DEF: TIGUE, RANDALL

MPLS PROS: KUZNIK, TONY

CT 01 PROSTITUTION S609.32483

CT 01 PROSTITUTION S609.32483(1)

3/25/92 11:01 CLERICAL

CT 01: CITATION/FILED

: NO BAIL REQUIRED FOR 3/25/2

05/06/92 09:00 OCM SET: ARR OCCRD:

ARR JUDGE ADZICK, G

: DOC/CERT. OF REPRESENTATION FILED

: WAIVER OF APPEARANCE FILED

ALL CT : COMPLAINT/DEMANDED

05/19/92 09:51 CLERICAL

CT 01: COMPLAINT/AMENDED FILED FOR 05/12/92

: SERVE COMPLAINT TO DEFT IN COURTROOM

06/05/92: 1400 ocm SET: RTCP OCCRD: RTCP JUDGE

ADZICK, G

ALL CT: ARRAIGNED

ALL CT: PLEAD NOT GUILTY

ALL CT: JURY TRIAL DEMANDED

07/13/92 09:30 PREC SET: PRLM OCCRD: PRLM JUDGE RICE

NOTICE/7.01/STATE REG DSCLOER FILED

ALL COURT: PRE-TRIAL HELD

09/16/92 14:40 SET: CLER OCCRD: CLER

ATTORNEY PICKED UP 2 SUBPOENAS FOR COURT

9/22/92 09:15 TRL SET: JTR. OCCRD: JTRIN JUDGE

CHRISTENSEN, W

JURY SELECTION IN PROGRESS

9-23-92 JTRIN 1953 JG CHRISTENSEN

09/22/92 10:07 CLERICAL

NOTICE/TO REMOVE JUDGE FILED/DEFN

ON JG KALINA BY DEFS ATTY TIGUE

CASE REASSIGNED TO JG CHRISTENSEN BY

JG LEVY

09/23/92 09:30 TRL SET: JTRIN OCCRD: JTRIN JUDGE

CHRISTENSEN, W

TESTIMONY COMPLETED

9-24-92 JTRIN 1953 JG CHRISTENSEN

09/24/92 09:30 TRL SET: JTRIN OCCRD: JTR JUDGE

CHRISTENSEN, W

CT 01: JURY TRIAL HELD

CT 01: FOUND GUILTY BY JURY

ORDERED/PRE-SENTENCE INVESTIGATION

VERDICT FORM FILED

JURY LIST FILED

09/25/92 09:30 TRL SET: FIND OCCRD: CANC

STRICKEN-VERDICT REACHED 09-24-92

09/25/92 23:59 BATCH SET: BATCH OCCRD: BATCH

CT 01: COMPUTER GENERATED FEES TAXED $15.00

10/01/92 09:00 SET: SENT OCCRD: SENT JUDGE

CHRISTENSEN, W.

CT 01: SENTENCED:

DATE/TIME PREPARED:

HENNEPIN COUNTY CRIMINAL COURTS

CASE HISTORY

10/20/92 15:34

CASE # 92023758

BROWN, FRANCES TAMEL (T) SIP# 00499770

4525 4TH ST S DOB: 11/29/64

MINNEAPOLIS MN 55409 RACE: SEX: F

DL: MN B650261785911

****

FINE OF $700.00 OR SERVE 11 DAYS AT ACF

DUE 11/02/92

$500.00 STAYED FOR 2 YEARS

AND SERVE 90 DAYS AT ACF

90 DAYS AND TIME STAYED FOR 002 YEARS

THERE ARE CONDITIONS ON THE WHOLE SENTENCE

K: SEE COMMENT DUE 12/30/92

PRICE COUNSELING COMPLETE

K: PROBATION/FOLLOW RECOMMENDATIONS DUE

10/01/94

K: NO PROSTITUTION OR RELATED CHARGES DUE 10/01/94

K: PAYMENT OF LAW LIBRARY FFEE $2.00

DUE 11/02/93

PAY $20.00 SURCHARGE DUE 11/02/93

REFERRED TO PROBATION

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FIRST DIVISION, MINNEAPOLIS

Criminal File Number: 92023758

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA STATUTE

617.81, Subdivision 3

Helen C. Fisher	Un Sil Olson
6521 Nordic Drive	6400 Barrie Road #1410
Edina, MN 55435	Edina, MN 55435
Myong Magnuson	Suzy Kotts
117 Washington Ave. N.	5504 Candy Cove Trail
First Floor	Prior Lake, MN 55372
Minneapolis, MN 55401	Business

Yoshiko's Sauna	117 Washington Ave. N.
117 Washington Ave. N.	First Floor
First Floor	Minneapolis, MN 55401
Minneapolis, MN 55401	

BEST AVAILABLE COPY

RE: Notice of Conviction, Criminal File No. 92023758 State of Minnesota, Fourth Judicial District

You are hereby notified pursuant to Minnesota Statute 617.81, Subdivision 3, that Frances Tamel Brown was convicted on September 24, 1992 of an offense described in Minnesota Statute 617.81, Subdivision 2, relating to public nuisances, to-wit, Prostitution, which occurred at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN 55401, which address has the legal description of "Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet" and Property Identification Number 22-029-24-410066.

You are also hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN 55401 could result in the premises being declared a public nuisance. Under Minnesota Statutes 617.80 through 617.87, the District Court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivision 3, this notice will be

filed with the County Recorder

Jack M. Provo, Administrator

Fourth Judicial District Court

Date: September 28, 1992

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Helen C. Fisher

6521 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Un Sil Olson

6400 Barrie Road

#1410

Edina, MN 55435

Dear Ms. Olson:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson,

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Myong Magnuson

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Ms. Magnuson:

As an interested party in the property located at 117 Washington Avenue North, rirst Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Suzy Kotts

5504 Candy Cove Trail

Prior Lake, MN 55372

Dear Ms. Kotts:

As an interested party in the property located - at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Occupants

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Business Owner

Yoshiko's Sauna

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Business Owner:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff, File No. MX 92-8094

vs. **ORDER**

Helen Fisher, Un Sil Olson,

f/k/a Un Sil Berg, and

Myong Magnuson and Suzy Kotts

d/b/a Yoshiko's Sauna,

Defendants.

The above-entitled matter came before the Honorable Mary Davidson Winter, Judge of District Court, on the 20th day of October, 1992, pursuant to the City's motion.

Scott Reeves, Assistant Minneapolis City Attorney, appeared as counsel for and on behalf of the plaintiff. Shane C. Perry, Attorney at Law, appeared as counsel for and on behalf of Defendants Fisher and Olson. Randall D.B. Tigue, Attorney at Law, appeared as counsel for

and on behalf of Defendant Myong Magnuson. Jerrold M. Hartke, Attorney at Law, appeared as counsel for and on behalf of Defendant Suzy Kotts.

THE COURT FINDS:

1. Defendant Un Sil Olson brought a motion to have Suzy Kotts evicted from the premises at 117 North Washington Avenue, Minneapolis, in June 1992. When the Court ruled on the motions before it, it did not specifically address this motion.

2. The Court has found that the lessee, Suzy Kotts, has maintained a nuisance at the premises (Court's Order dated September 8, 1992).3.

3. Pursuant to Minn. Stat. Section 617.85, the Court is directed to cancel Suzy Kott's lease and restore the premises to Un Sil Olson.

4. Eviction of Suzy Kotts and restoration of her interest in the premises to Un Sil Olson does not affect the status of the Temporary injunction, inasmuch as Suzy Kott's lease is for Mondays, Tuesdays, Fridays, and alternating Sundays, and Myong Magnuson's lease to operate Yoshiko's Sauna is for Wednesdays, Thursdays, Saturdays, and alternating Sundays.

5. Since issuance of the Temporary injunction, a new business has opened at 117 North Washington, Minneapolis, called "M's Health

Club", which appears to be the same business under a new name. This is almost as disengenuous as the division-of-the-week leases discussed in this Court's Order of September 8, 1992. The Minneapolis police Department has not yet produced evidence of the behaviors which resulted in the issuance of the Temporary injunction, so the City's motion must be denied.

6. There is some indication the parties wish to stipulate to the issuance of a permanent injunction. if so, they should proceed to do so, and submit their stipulation to the Court.

NOW, THEREFORE, IT IS ORDERED:

1. Un Sil Olson is awarded restitution of her interest in the premises at 117 North Washington Avenue, Minneapolis, and Suzy Kotts is ordered to vacate immediately upon receipt of this Order.

2. The City's motions for modification of the Temporary Injunction are denied.

3. The Court's Order of September 8, 1992 remains in full force and effect.

4. Copies of this Order shall be mailed to counsel who shall see that their clients are properly served.

BY THE COURT:

MARY DAVIDISON WINTER

Judge of District Court

DATED: October 28, 1992

DISTRICT COURT

STATE OF MINNESOTA

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

CITY OF MINNEAPOLIS,

A MUNICIPAL CORPORATION,

Plaintiff,

vs.

HELEN FISHER, UN SIL OLSON, A/K/A UN SIL BERG, MYONG MAGNUSON, AND SUZY KOTTS, D/B/A YOSHIKO'S SAUNA,

Defendants.

ORDER

File No. MX 92-8094

The above-entitled matter came before the Honorable Mary Davidson (Winter) , Judge of District Court, on the 8th day of January, 1993, pursuant to Plaintiff City of Minneapolis' Complaint for permanent injunction and Order of Abatement.

SCOTT REEVES, Assistant Minneapolis City Attorney, appeared as counsel for and on behalf of the Plaintiff. SHANE PERRY, Attorney at Law, appeared as counsel for and on behalf of

Defendants Helen Fisher and Un Sil Olson. RANDALL D.B. TIGUE, Attorney at Law, appeared as counsel for and on behalf of Defendant Myong Magnuson. JERROLD M. HARTKE, Attorney at Law, appeared as counsel for and on behalf of Defendant Suzy Kotts.

The parties stipulated that all previously submitted affidavits, and attached exhibits, would be admitted in evidence. Additional evidence was submitted by testimony from Defendants Helen Fisher and Suzy Kotts, and by affidavit. Based on the evidence and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT:

1. Plaintiff City of Minneapolis is a municipal corporation organized under the laws of the State of Minnesota.

2. The property located at 117 Washington Avenue North, Minneapolis, is legally described as:

The Northwestern 22 feet of Lot 8, Block 55, Town of Minneapolis Addition.

3. The property located at 117 Washington Avenue North, Minneapolis, is owned by Defendants Helen Fisher and Un Sil Olson as tenants in common. Helen Fisher is the person in whose name the property is recorded with the County Auditor for taxation

purposes, and therefore the "owner" of the property for purposes of Minnesota Statutes, Section 617.80, Subd. 7.

4. At all times relevant to this action, the building at 117 Washington Avenue North contained a business known as Yoshiko's Sauna. Defendant Myong Magnuson registered the name "Yoshiko's" as an unincorporated business trade name with the Minnesota Secretary of State as of March 21, 1991. Magnuson operated Yoshiko's on Wednesdays, Thursdays, Saturdays, and alternating Sundays pursuant to her lease with Helen Fisher. Suzy Woo Kotts operated Yoshikos on Mondays, Tuesdays, Fridays, and alternating Sundays pursuant to her lease with Un Sil Olson. However, the leases speak only to an undivided one-half interest and do not contain the specific time division apparently worked out by the lessees.

5. The portion of the building at 117 Washington Avenue North involved in this action is a commercial structure maintained for business activities involving human occupation, and therefore a "building" as defined in Minnesota Statutes, Section 617.80, Subd. 2.

6. Within the previous two years there have been four criminal convictions for acts of prostitution committed at 117 Washington Avenue North which qualify to establish that the premises are a

nuisance as defined in Minnesota Statutes Section 617.80. These prostitution convictions are:

a. Defendant: Suzy W. Kotts

H.C.D.C. File No. 90-089051

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 11-27-90

Date of Conviction: 3-27-91

Notice of Conviction: 4-24-91

Category: Gross Misdemeanor

b. Defendant: Lola Jean Skenadore a/k/a Ekobena

H.C.D.C. File No. 91-039512

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 6-4-91

Date of Conviction: 9-19-91

Notice of Conviction: 9-23-91

Category: Misdemeanor

c. Defendant: Kathie Lee Moos

H.C.D.C. File No. 91-091402

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 12-10-91

Date of Conviction: 5-7-92

Notice of Conviction Mailed: 5-26-92

Category: Misdemeanor

d. Defendant: Frances Tamel Brown

H.C.D.C. File No. 92-023758

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 3-19-92

Date of Conviction: 9-24-92

Notice of Conviction Mailed: 9-28-92

Category: Misdemeanor.

The first two convictions had been obtained when this action was commenced. The second two were pending.

7. Notices of the aforementioned convictions have been mailed by the Hennepin County District Court Administrator to the owners of the property and to interested parties as defined in Minnesota Statutes, Section 617.80, Subd. 8, and have been recorded against the property with the Hennepin County Recorder.

8. Neither Defendant Fisher nor Defendant Olson (Berg) took remedial action when notified of convictions "a" and "b" above. Only when the City of Minneapolis sought an injunction against the

operation of Yoshiko's Sauna was an eviction of Defendant Kotts pursued.

9 It is clear from the actions of the Defendants that only a permanent injunction expressed as broadly as permitted by Minn. Stat. 617.83 will prevent the use of the premises for sexually oriented services.

10. The testimony presented at this hearing did not produce any new information which would change the court's reasoning in its memo of September 8, 1992.

CONCLUSIONS OF LAW:

1. The subject property is a "building" as that term is defined in Minn. Stat. 617.80, Subd. 2.

2. Defendants Fisher and Olson are "owners" as that term is defined in Minn. Stat. 617.80, Subd. 7.

3. Defendants Magnuson and Kotts are "interested parties" as defined by Minn. Stat. 617.80, Subd. 8.

4. The operation of Yoshiko's Sauna at 117 Washington Avenue North constitutes a "public nuisance" as defined by Minn. Stat. 617.80, Subd 2(1).

5. Notices of all convictions were properly mailed by the District

Court Administrator to owners and interested parties, and were subsequently filed with the Hennepin County Recorder's Office in compliance with Minnesota Statutes Section 617.81, Subd. 3.

6. Issuance of a permanent injunction in this case does not violate Defendants' constitutional rights. See Hvamstad v. Suhler, 915 F.2d 1218 (8th Cir. 1990).

ORDER FOR INJUNCTION

AND ORDER OF ABATEMENT:

1. A public nuisance exists in the building located at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

2. Defendants Helen Fisher, Un Sil Olson, Myong Magnuson, and Suzy Kotts, and their agents and representatives and all persons in active concert or participation with Fisher, Olson, Magnuson, and Kotts are hereby permanently enjoined and prohibited from operating, leasing to, or allowing any other person to operate Yoshiko's Sauna in the building at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

3. Defendants Helen Fisher, Un Sil Olson, Myong Magnuson, and Suzy Kotts, and their agents and representatives and all persons in

active concert or participation with Fisher, Olson, Magnuson, and Kotts are permanently enjoined and prohibited from operating, or allowing the operation of, any other sauna, massage parlor, rap parlor, escort service, modeling service, outcall service, or similar business offering sexually oriented services, in the building located at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

4. Defendants Helen Fisher, Un Sil Olson, Myong Magnuson, and Suzy Kotts are permanently enjoined and prohibited from allowing any other person to offer massage, sauna, modeling, escort, outcall or other sexually oriented services in the building located at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

5. That the portion of the building at 117 Washington Avenue North which contains or contained Yoshiko's Sauna shall be closed for a period of one year from the date of this Order. Defendants shall remove all movable property from the premises. Defendants shall remove, paint over, and otherwise mask all signs identifying the business therein. Defendants shall give plaintiff and its authorized representatives reasonable access to the interior of the premises to

verify compliance with the terms and conditions of this Order.

6. That this injunction shall be in full force and effect from the date of this Order and shall remain in effect until further order of this Court.

BY THE COURT:

_____

MARY DAVIDSON (WINTER)

Judge of District Court

DATED: February 24, 1993

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff, **NOTICE OF APPEAL**

TO COURT OF APPEALS

vs.

Helen Fisher, Un Sil Olson, Trial Court Case No. MX-92-8094

aka Un Sil Berg, and Myong

Magnuson, dba Yoshiko's Sauna, Date of Order: 2/24/93

Defendants. Notice of Filing Served March 8, 1993.

TO:

Clerk of Appellate Courts

Minnesota Judicial Center

25 Constitution Avenue

St. Paul, Minnesota 55155

PLEASE TAKE NOTICE that Defendant Myong Magnuson, by

the undersigned, appeals to the Court of Appeals to the State of Minnesota from the order for abatement and permanent injunction filed and dated February 24, 1993, granting Plaintiffs' Motions for permanent injunction and abatement. Written notice of filing was served by mail on March 8, 1993.

Attorney for Plaintiff:

Scott Reeves

Assistant City Attorney

A-1700 Hennepin County Government Center

300 South 6th Street

Minneapolis, MN 55487

(612) 673-2066

Attorney for Defendants

Helen Fisher and

Un Sil Olson:

Shane C. Perry

Norwest Bank Building

Suite 110

900 East Wayzata Boulevard

Wayzata, Minnesota 55391

(612) 473-0130

Attorney for Defendant

Suzie Kotts:

Jerrold M. Hartke

820 Southview Boulevard

Suite 100

South St. Paul, Minnesota 55075

(612(451-2233

Randall D.B. Tigue, Att. Id. No. 110000

Attorney for Defendant Myong Magnuson

2620 Nicollet Avenue

Dated: March 23, 1993 (612) 874-9903

STATE OF MINNESOTA

IN COURT OF APPEALS

C1-93-637

C3-93-655

Hennepin County

District Court File 928094 Parker, Judge

City of Minneapolis,

Respondent,

Hubert H. Humphrey, III,

Attorney General,

State of Minnesota,

Respondent

vs.

Helen Fisher, et al.,

Appellants (C1-93-637),

Respondents (C3-93-655),

Myong Magnuson, d/b/a

Yoshiko's Sauna,

Respondent (C1-93-637),

Appellant (C3-93-655),

Suzy Kotts, d/b/a

Yoshiko's Sauna,

Respondent.

Robert J. Alfton

Minneapolis City Attorney

Richard Scott Reeves

Assistant City Attorney

333 South Seventh St., Suite 300

Minneapolis, MN 55402-2453

Jocelyn F. Olson

Assistant Attorney General

525 Park Street, Suite 200

St. Paul, MN 55103

Stewart R. Perry

Shane C. Perry

Perry, Perry & Perry

110 Norwest Bank Building

900 East Wayzata Boulevard

Wayzata, MN 55391

Randall D. B. Tigue

Nicollet Avenue Prof. Bldg.

2620 Nicollet Avenue

Minneapolis, MN 55408

Jerrold M. Hartke

820 Southview Blvd.,

Suite 100

South St. Paul, MN 55075-2397

Filed August 10, 1993

Office of Appellate Courts

SYLLABUS

1. Minnesota's Public Nuisance Law does not, on its face, violate constitutionally protected due process and associational rights.

2. As applied, Minnesota's Public Nuisance Thaw does not violate appellants' due process and associational rights.

3. The trial court's abatement order does not constitute a taking such as to require just compensation under the constitution.

4. The evidence is sufficient to support the trial court's decision that appellants' property constituted a public nuisance.

5. The trial court's order does not unreasonably restrict appellants' use of their property.

Affirmed.

Considered and decided by Parker, Presiding Judge, Lansing, Judge, and Short, Judge.

OPINION

PARKER, Judge

Appellants challenge the constitutionality of Minnesota's Public Nuisance Law, alleging various violations of constitutional protections. Appellants also contend there was insufficient evidence to support the trial court's determination that their building is a public nuisance, and

allege they are entitled to relief from the trial court's abatement order because they evicted the offending tenant prior to its issuance. Finally, appellants claim the trial court's permanent injunction against future operation of sexually oriented businesses unreasonably restricts their use of the property. We affirm.

FACTS

Appellants Helen Fisher and Un Sil Olson, tenants in common, each own an undivided one-half interest in the property and the building located at 117 Washington Avenue North in Minneapolis. Before commencement of this action, the building contained both residential apartments and a commercial business known as Yoshiko's Sauna. Originally, Fisher and Olson operated Yoshiko's Sauna, each owning 50 percent of the business. Fisher later agreed to sell her interest in the business and its supplies to appellant Myong Magnuson. Fisher leased a portion of the premises to Magnuson. Olson leased her 50 percent interest in the premises and business to appellant Suzy Woo Kotts.

Magnuson and Kotts operated Yoshiko's on alternating days of the week. Although this was a mutually agreed-upon arrangement, the leases do not specify any division as to the use of the property

between Magnuson and Kotts. Under the leases, both Magnuson and Kotts have an undivided one-half interest in the equipment, furniture, and personal property.

The trial court found Kotts and Magnuson operated Yoshiko's Sauna as a single business entity, on the following evidence: Yoshiko's had only one published telephone number and advertised only as Yoshiko's Sauna; Yoshiko's employees never identified themselves as agents of separate businesses and there was no variation in Yoshiko's business hours; sauna employees wore low-cut swimsuits or provocative lingerie regardless of who was operating the sauna; and the same or similar services were offered at the same prices. During arrests made on both Magnuson's and Kotts' "days," Yoshiko's employees told undercover agents a basic massage cost $40 and an "exchange" massage, in which the customer gives a massage to the masseuse, cost $50.

Based on two prostitution convictions, one of which was a gross misdemeanor, the City of Minneapolis brought an action against Fisher, Olson, Magnuson and Kotts, seeking a temporary and permanent injunction and an order of abatement pursuant to Minnesota's Public Nuisance Law, Minn. Stat. §§ 617.80-87 (1992) . Notices

of the first two prostitution convictions were mailed by the district court administrator to the owners and interested parties as required by Minn. Stat. § 617.81.

After the City of Minneapolis began this action, there were two additional convictions for prostitution at Yoshiko's Sauna. Notices of these convictions were also sent to the relevant parties. All notices of conviction were mailed shortly after the date of conviction, and the notices were also filed against the property with the city recorder.

Three of the prostitution convictions occurred on days Kotts operated the sauna, and one conviction occurred on Magnuson's day. Neither Fisher, Olson, Magnuson, or Kotts took any action in response to the conviction notices. However, after this nuisance action was commenced, the owners brought a motion to evict Kotts under Minn. Stat. § 617.85. No motion was brought to rescind Magnuson's lease.[1]

By order dated February 24, 1993, the trial court determined that a public nuisance existed at 117 North Washington. Pursuant to the

---

[1] After the trial court issued a temporary injunction ordering Yoshiko's Sauna to cease business, the sauna changed its name to "M's Health Club" and remained open for business. The trial court found M's Health Club "appears to be the same business under a new name."

abatement provision of Minn. Stat. § 617.83, the court ordered the portion of the building containing Yoshiko's closed for one year. The court permanently enjoined the defendants from operating or allowing the operation of Yoshiko's Sauna, or any other sauna, massage parlor, rap parlor," escort service, modeling service, outcall service, or similar business offering sexually oriented services at 117 Washington Avenue North. Appeal is from this order.

ISSUES

I. Was the evidence sufficient to support the trial court's conclusion that the portion of the building housing Yoshiko's Sauna is a public nuisance?

II. Is Minnesota's Public Nuisance Law unconstitutional on its face?

III. Does Minnesota's Public Nuisance Law violate appellants' due process rights?

IV. Does Minnesota's Public Nuisance Law violate appellants' associational rights?

V. Does Minnesota's Public Nuisance Thaw violate federal constitutional proscriptions against taking private property with- out just compensation?

VI. Does the trial court's permanent injunction unreasonably restrict appellants' use of their property?

DISCUSSION

Minn. Stat. § 617.80-87 (1992) essentially creates a statutory cause of action for abatement of particular activities that the legislature has defined as public nuisances. Minn. Stat. § 617.81, subd. 2(a), provides in pertinent part:

> A public nuisance exists upon proof of three or more misdemeanor convictions or two or more convictions, of which at least one is a gross misdemeanor or felony, within the previous two years for:
>
> (1) acts of prostitution or prostitution-related offenses committed within the building.

Subdivision 3 of section 617.81 requires that notice of a conviction be mailed by the court administrator to the owner of the building where the offense was committed and to all other interested parties. It further requires that the notice be filed with the county recorder.

Section 617.82 permits a city attorney, county attorney, or the attorney general to seek a temporary injunction to enjoin conduct creating a public nuisance. Section 617.83 requires a court, upon

proof of a nuisance as defined in the statute, to issue a permanent injunction and abatement order. The injunction must describe the conduct to be enjoined. Id. The abatement order must direct the closing of the building, or part of it, for one year. Id.

There are two ways an abatement order can be avoided. First, under section 617.85, if the conduct resulting in the abatement order involved the acts of a tenant or lessee, the owner of the property can terminate the lease and thus avoid, or have vacated, the abatement order. Alternatively, under section 617.87, the court can release the subject property if the owner posts a bond, not to exceed $50,000, conditioned on the abatement of the nuisance for one year. The owner is then subject to forfeiture under the bond of $1,000 for each day that he or she knowingly permits conduct that resulted in the abatement order to occur during the one-year release period.

I

Appellants argue that the evidence was insufficient to support the trial court's nuisance determination. Specifically, they advance two propositions. First, they contend that because there was only one prostitution conviction during Magnuson's tenancy, it does not meet the statutory requirement of two convictions, at least one of which is a

gross misdemeanor. We disagree.

As mentioned above, both Magnuson's and Kotts' leases conveyed an undivided one-half interest in the premises. Either Magnuson or Kotts could have insisted upon occupying the premises on all days of the week. In addition, their sharing of utility bills, one phone number, and representation to the public that Yoshiko's was a single business entity support the trial court's determination that only one business existed and the alternating-days arrangement was simply for convenience. As the trial court stated, it would exalt form over substance to divide the business into two separate enterprises or tenancies for purposes of the public nuisance statute. Thus, we believe the alternating-days agreement is an arrangement without legal significance.

Moreover, allowing appellants to prevail on their two businesses" claim could lead to absurd results. Establishments permitting prostitution could structure their real estate holdings so there would be multiple tenants, thus requiring the city to obtain numerous convictions to obtain an abatement order for a single building. Such an artifice defeats the legislative purpose of the statute. See Minn. Stat. § 645.17 (in ascertaining the intent of the legislature, courts

should avoid absurd results).

Second, appellants maintain they complied with the statute because the owners evicted Suzy Kotts and therefore should not have been subjected to the abatement order. We disagree.

The relevant part of Minn. Stat. § 617.85 provides:

> Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building under the control of the tenant or lessee, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:
>
> (a) upon the motion of the building owner cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and
>
> (b) further finds that the acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed in a portion of the building under the control of the tenant or lessee whose lease or tenancy had been canceled pursuant to this section.

Under the leases, both Kotts and Magnuson had a one-half

undivided interest in the premises. Given the trial court's finding of joint control of the premises, the owners failed to comply with the statute by not evicting both Magnuson and Kotts. Thus, we conclude the evidence was sufficient to support a nuisance determination and an abatement order was justified. We next consider the constitutional issues raised.

II

Appellants claim that Minn. Stat. §§ 617.80-. 87 is unconstitutional on its face because it violates both their due process and freedom of association rights. To prevail on a facial attack, the plaintiff must demonstrate that the challenged law either (1) "could never be applied in a valid manner," or (2) even though it may be validly applied to the plaintiff and others, it nevertheless is so overbroad that it 'may inhibit the constitutionally protected speech of third parties.' New York State Club Ass'n v. City of New York, 487 U.S. 1, 12, 108 5. Ct. 2225, 2233 (1988) (quoting City Council of Los Angeles v. TaxSavers for Vincent, 466 U.S. 789, 798, 104 S.Ct. 2118, 2125 (1984)).

The federal courts have rejected a facial challenge to Minn. Stat. §§ 617.80- .87 on both due process and freedom of association

grounds. Hvamstad v. Suhler, 727 F. Supp. 511, 519 (D. Minn. 1989), aff'd., 915 F.2d 1218 (8th Cir. 1990). Because both the Federal District Court and the Eighth Circuit Court of Appeals determined, as a matter of federal constitutional law, that Minn. Stat. §§ 617.80- .87 does not, on its face, violate due process and freedom of association rights, such a determination is binding on this court when reviewing appellants' federal constitutional claims. See Cooper v. Aaron, 358 U.S. 1, 18, 78 S.Ct. 1401, 1409 (1958) (the federal judiciary is supreme in exposition of the law of the Constitution); see generally Lawrence H. Tribe, American Constitutional Law § 3-4 at 32-36 (2d ed. 1988) . Consequently, appellants' facial constitutional challenges must fail.

We next consider appellants' claim that, as applied in this instance, Minnesota's Public Nuisance Law violates their due process and associational rights.

III

At a minimum, the due process clause requires that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for a hearing appropriate to the nature of the case. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70

5. Ct. 652, 656-57 (1950) . In Hvamstad, concluding that Minn. Stat. § 617.80-87 did not violate procedural due process, the Federal District Court noted:

> Under the statute, landowners receive both notice and an opportunity to be heard. Section 617.82 provides that no injunction can be issued without a prior show cause notice of hearing to the landowner and an opportunity for the landowner to be heard. Section 617.83 further provides that upon proof of a nuisance as defined in the statute, the court shall issue a permanent injunction and enter an order of abatement. Thus, it is clear that the statute requires a hearing where the landowner has an opportunity to prove that there were no alleged convictions for crimes described in the statute and occurring on the owner's property. Such a hearing satisfies due process requirements.

Hvamstad, 727 F. Supp. at 519.

In this case, the trial court specifically found that appellants received notices of all the convictions. We also note appellants had a hearing at which they were allowed to challenge whether the convictions occurred on their property. We therefore conclude there

were no procedural due process violations.

Appellants also contend Minn. Stat. §§ 617.80-87, as applied in this case, violates their substantive due process rights. In particular, they maintain the abatement law denies them due process because it binds them to prostitution convictions without an opportunity to appear and challenge the underlying facts of those convictions. In other words, they claim to be bound by judgments to which they were not parties. An identical argument was raised and rejected in Hvamstad. The Eighth Circuit noted:

> Hence, it is no longer the acts themselves that are the nuisance; the successive convictions are the nuisance. * * * Those owners who do not abate the criminal activity, and instead allow it to continue on their premises despite notice of convictions therefrom, then face a judicial determination of nuisance and abatement based on the convictions, not the acts.

Hvamstad, 915 F.2d at 1220. Similarly, appellants are not held accountable for the acts which occurred on their premises but, rather, for their failure to respond appropriately to the notices of prostitution convictions.

Appellants attempt to distinguish Hvamstad by claiming the two

undivided property interests require that they be treated as separate entities. In particular, Magnuson contends that, because only one conviction occurred on her "day," the court's order is unconstitutional. See id. ("[i]f the statute permitted abatement on evidence of a single conviction with no opportunity for the property owner to deny the underlying act or first to eliminate the illegal act himself, the law would likely neither be reasonable nor constitutional").

The trial court specifically found that both Magnuson and Kotts ran Yoshiko's Sauna. The court's finding is supported by the evidence and therefore not clearly erroneous. City of Minnetonka v. Carlson, 298 N.W.2d 763, 766 (Minn. 1980) . Appellants' contention that the statute, as applied, violates substantive due process lacks merit.

IV

Appellants also allege Minnesota's Public Nuisance Law violates their freedom of association. They maintain Yoshiko's Sauna is being closed not for their own conduct but, rather, solely for their association with others who engage in wrongful conduct. Appellants' argument misconstrues the nature of the statute. Minn. Stat. §§ 617.80-87 is a public health regulation. It does not regulate with whom an individual associates. Appellants may associate with

prostitutes and not be accountable under this statute. It is tolerance of successive prostitution convictions for actions performed on their property that violates the statute. Accordingly, we conclude appellants' associational rights have not been violated.

We find appellants' Fifth Amendment taking claim equally unpersuasive. Appellants contend that under Lucas v. South Carolina Coastal Council, ___ U.S. ___, 112 5. Ct. 2886 (1992), they are entitled to compensation for the one-year "taking" of a portion of their building at 117 North Washington Avenue. We believe appellants' reliance on Lucas is misplaced. The Lucas court held:

> When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is to leave his property economically idle, he has suffered a taking.

Id. at ___, 112 S.Ct. at 2895 (emphasis in original).

Because appellants are still able to rent the residential apartments at 117 North Washington, they have not lost all economically beneficial uses of their property. See id. at ___, 112 S.Ct. at 2895 n.8 ("It is true that in at least some cases the landowner with 95% loss will get nothing, while the landowner with total loss will recover in

full") (emphasis in original)

Moreover, because of the temporary nature of the alleged taking, we conclude appellants cannot avail themselves of the Lucas rule. In Woodbury Place Partners v. City of Woodbury, 492 N.W.2d 258 (Minn. App. 1992), pet. for rev. denied (Minn. Jan. 15, 1993), cert. denied, __ U.S. __ (1993), property owners brought an action against the city, alleging an unconstitutional taking arising out of a two-year moratorium on development. Rejecting the property owners' argument that Lucas required they be compensated for the - taking, this court noted:

> To invoke the total takings analysis of Lucas, the partnership relies exclusively on the stipulation that the moratorium denied all economically viable use of the property from March 23, 1988 to March 23, 1990. We interpret the phrase "all economically viable use for two years" as significantly different from "all economically viable use" as applied in Lucas.

Id. at 261. When measured against the value of the property as a whole, the two-year moratorium did not deny the partnership "all economically viable use of its property." Id. at 262. Likewise, the one-year abatement period of a portion of appellants' building did not

constitute a taking requiring compensation under the Fifth Amendment.

VI

Appellants also argue the trial court erred by permanently enjoining them from operating or allowing the operation of "any other sauna, massage parlor, rap parlor, escort service, modeling service, outcall service, or similar business offering sexually oriented services" at 117 North Washington. Appellants contend these are legitimate businesses and, after the one-year abatement period, they should be allowed to operate their building in any lawful manner.

We believe appellants misconstrue the nature of the trial court's order. The phrase "sexually oriented services" modifies all the aforementioned specified businesses. In other words, two things must be established to find a violation of the injunction: (1) that the business being operated is one of the proscribed businesses or one otherwise known to facilitate prostitution; and (2) that the business offers sexually oriented services. Because any legitimate business which does not offer sexually oriented services can be operated at 117 North Washington Avenue after the one-year abatement period, we conclude the injunction does not unreasonably

restrict appellants' use of their property.

DECISION

The evidence is sufficient to support the trial court's decision that appellants' property constituted a public nuisance. Minnesota's Public Nuisance Law does not, on its face or as applied, violate constitutionally protected due process and associational rights. The trial court's abatement order does not constitute a taking requiring compensation under the Fifth Amendment. Finally, we hold that the trial court's order does not unreasonably restrict appellants' use of their property.

Affirmed.

STATE OF MINNESOTA

SUPREME COURT

93-637 and C3-93-655

City of Minneapolis,

Respondent,

Hubert H. Humphrey, III, Attorney

General, State of Minnesota,

Respondent,

vs.

Helen Fisher, et al.,

Appellants (C 1-93-637),

Respondents (C3-93-655),

Myong Magnuson d/b/a Yoshiko's Sauna,

Respondent (C 1-93-637),

Appellant (C3-93-655),

Suzy Kotts d/b/a Yoshiko's Sauna,

Respondent.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Myong Magnuson for further review be, and the same is, denied.

Dated: September 30, 1993

BY THE COURT:

_____

Chief Justice

AMENDMENT [I.]

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction and equal protection of the laws.

617.80. Definitions

Subdivision 1. Generally. The definitions in this section apply to sections 617.80 to **617.87.**

Subd. 2. Building. "Building" means a structure suitable for human shelter, a commercial structure that is maintained for business activities that involve human occupation, or any portion of such structures.

Subd. 3. Movable property. "Movable property" means furniture and Fixtures.

Subd. 4. Prostitution. "Prostitution" or "prostitution related offenses" means the conduct defined in sections 609.821 to 609.324.

Subd. 5. Gambling. "Gambling" or "gambling related offenses" means the conduct described in sections 609.75 to 609.762.

Subd. 6. Disorderly house. "Disorderly house" has the meaning assigned to it in section 609.33.

617.82. Temporary order

Whenever a city attorney, county attorney, or the attorney general has cause to believe that a nuisance described in section 617.81, subdivision 2, exists within the jurisdiction the attorney serves, that

attorney may by verified petition seek a temporary injunction district court in the county in which the alleged public nuisance exists. No temporary injunction may be issued without a prior show cause notice of hearing to the respondent named in the petition and an opportunity for the respondents to be heard. Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a temporary: injunction. Any temporary injunction issued must describe the conduct to be enjoined

Laws 1987. c. 283 8

617.83 Injunction; order of abatement -

Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a permanent injunction and enter an order of abatement The permanent injunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of the building or a portion of it for one year, except as otherwise provided in section 617.84 or 617.85, unless sooner released pursuant to section 617.87. Before a abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under section 617.851 the same manner that a summons is served under the rules of civil procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or affected portion. Laws 1987, e. 283, § 4.

617.84. Movable property

The order of abatement may direct the removal of movable property used in conducting or maintaining the nuisance and direct the sale of property belonging to a respondent who was notified or appeared. The sale shall be conducted pursuant to the provisions of chapter 550 on the sale of property on execution. A person appointed by the court as receiver of the building may use a building or portion of it which is the subject of an abatement order in a manner approved by the court. Costs of the sale on execution, moving and storage fees, and any receivership must be paid out of the receipts from the sale of the movable property or any rents collected during the receivership. The balance from the sale of movable property must be paid to the owner of the property. The balance from any rents collected during any receivership shall be paid to the treasury of the unit of government which brought the abatement action.

Laws 1987, c. 283, Section 5.

617.85. Nuisance; motion to cancel lease

Where an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or

lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. In addition to the grounds provided in chapter 566, the maintaining or conducting of a nuisance as defined in section 617.81, subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease or the restitution of the premises. It is no defense to a motion under this section by the owner that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the ground provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building under the control of the tenant or lessee; the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(a) upon the motion of the building owner cancels a lease or

tenancy and grants restitution of that portion of the premises to the owner; and

(b) further finds that the acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed in a portion of the building under the control of the tenant or lessee whose lease or tenancy has been canceled pursuant to this section.

Laws 1987, c. 283, § 6.

617.86. Contempt

Whoever violates a temporary injunction, permanent injunction, or abatement order granted under sections 617.80 to 617.87 may be adjudged in contempt of court.

Laws 1987 c. 283, § 7

617.87. Release of property

If, after an order of abatement has been entered, the owner appears and pays the costs of the action and files a bond in an amount determined by the court, but not to exceed $50,000, conditioned that the owner will immediately abate the nuisance for a period of one year, the court may, if satisfied of the owner's good faith, order the release of the building or portion of it which is subject to the order of abatement. If the premises are released, for each day

during the term of the bond that the owner knowingly permits any part of the premises to be used for any activity which was the basis of the abatement order, the owner shall forfeit $1,000 under the bond. Forfeiture under the bond does not relieve the owner from prosecution for contempt. Release of the property pursuant to this section does not release it from an injunction issued under section 617.83 or any other judgment penalty, lien, or liability to which it may be subject by law.

Laws 1987, c. 283, Section 8.

Supreme Court, U.S.
F I L E D
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No. 93-1261

In The

Supreme Court of the United States

October Term, 1993

MYONG MAGNUSON,

Petitioner,

vs.

CITY OF MINNEAPOLIS, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Minnesota Court Of Appeals

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the Public Nuisance Law, Minn. Stat. §§ 617.80 through 617.87 (1992), which authorizes closure of a building or portion thereof for one year upon a determination that a certain number of prostitution convictions had occurred there, violate the Petitioner's right to due process of law under the Fourteenth Amendment to the United States Constitution?

2. Does the Public Nuisance Law violate the Petitioner's right to freedom of association under the First Amendment to the United States Constitution?

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No. 93-1261

In The

Supreme Court of the United States

October Term, 1993

MYONG MAGNUSON,

Petitioner,

vs.

CITY OF MINNEAPOLIS, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Minnesota Court Of Appeals

BRIEF IN OPPOSITION

The Respondents City of Minneapolis and State of Minnesota respectfully request that this Court deny the Petition for Writ of Certiorari (hereinafter "Pet.") seeking review of the decision of the Minnesota Court of Appeals in this case. The opinion of the Minnesota Court of Appeals is reported as *Minneapolis v. Fisher,* 504 N.W.2d 523 (Minn. Ct. App. 1993), and is reproduced in the appendix to the petition (hereinafter "Pet. App.") at pages A180-A200. The Minnesota Supreme Court's order denying review is reproduced in the appendix to the petition at pages A201-02.

STATEMENT OF THE CASE

The Petitioner Myong Magnuson challenges the constitutionality of the Public Nuisance Law, Minn. Stat. §§ 617.80 through 617.87 (1992), which essentially creates a statutory cause of action for abatement of particular activities that the legislature has defined as public nuisances. Minn. Stat. § 617.81, subd. 2(a) (1992), provides, in relevant part:

> [A] public nuisance exists upon proof of three or more misdemeanor convictions or two or more convictions, of which at least one is a gross misdemeanor or felony, within the previous two years for:
>
> (1) acts of prostitution or prostitution-related offenses committed within the building.

Subdivision 3 of section 617.81 requires that notice of a conviction described in subdivision 2 be mailed by the court administrator to the owner of the building where the offense was committed and all other interested parties. It further requires that the notice be filed with the county recorder.

Minn. Stat. § 617.82 (1992) permits a city attorney, county attorney, or the Attorney General to seek a temporary injunction in state district court to enjoin conduct creating a public nuisance as defined in the statute. Section 617.83 requires a court, upon the proof of a nuisance as defined in the statute, to issue a permanent injunction and an abatement order. The injunction must describe the conduct to be enjoined. The abatement order must direct the closing of the building, or part of it, for one year. *Id.* The abatement order must be served upon the owner of

the building and must be posted in a conspicuous place on the building or on the affected portion thereof. *Id.*

There are two ways that an abatement order can be avoided. First, pursuant to section 617.85, if the conduct resulting in the abatement order involved the acts of a tenant or lessee, the owner of the property can terminate the lease and avoid, or have vacated, the abatement order. Alternatively, pursuant to section 617.87, the court can release the subject property if the owner posts a bond, not to exceed $50,000, conditioned on the abatement of the nuisance for a period of one year. The owner is then subject to forfeiture under the bond of $1,000 for each day that he or she knowingly permits conduct that resulted in the abatement order to occur during the one year release period.

Petitioner's challenge to the Public Nuisance Law arises in the context of an appeal from a February 24, 1992, district court order abating a public nuisance at Yoshiko's Sauna, located in a building at 117 Washington Avenue North, Minneapolis. Pet. App. A168-76. The building is owned by Helen Fisher and Un Sil Olson (also known as Un Sil Berg) as tenants in common. Pet. App. A169. In addition to housing Yoshiko's Sauna, the building contains residential apartments. Pet. App. A115.

Originally, Fisher and Olson operated Yoshiko's Sauna, each owning 50 percent of the business. Pet. App. A115. Fisher leased and later sold her interest in the business to appellant Myong Magnuson. *Id.* Fisher also leased the portion of the building where Yoshiko's Sauna was located to Magnuson. *Id.* Olson then leased her 50 percent interest in the premises and the business to Suzy

Woo Kotts. *Id.* Magnuson operated Yoshiko's on Wednesdays, Thursdays, Saturdays, and alternating Sundays pursuant to her lease with Helen Fisher. *Id.* at A119-20. Suzy Woo Kotts operated Yoshiko's on Mondays, Tuesdays, Fridays, and alternating Sundays. *Id.* at A120.

Based on two prostitution convictions for conduct which occurred at Yoshiko's Sauna, Respondent City of Minneapolis ("City") brought an action in Hennepin County District Court against Fisher, Olson, Magnuson, and Kotts seeking a temporary and permanent injunction and an order of abatement pursuant to the Public Nuisance Law. Pet. App. A3-11. At the temporary injunction stage, Magnuson argued that closure of the business would punish her for the sins of Kotts, since the two prostitution convictions were based on conduct that occurred on Tuesday, when Kotts operated Yoshiko's. The district court rejected the argument, stating:

> This argument exalts form over substance. Kotts and Magnuson are running one business, Yoshiko's, in one physical plant, using the same equipment, telephone, furniture, heat, electricity, and, in some instances, staff. They cannot be construed as separate.

Id. A124. An order enjoining the operation of Yoshiko's Sauna until further notice of the court was issued September 8, 1992. *Id.* A118-23.

After issuance of the temporary injunction, a new business opened at 117 North Washington, Minneapolis, called "M's Health Club," which appeared to be the same business as Yoshiko's Sauna under another name. *Id.* A165-66. On October 28, 1992, the district court refused to

modify the temporary injunction to cover "M's Health Club" and granted a motion of Olson to evict Kotts and restore Olson's interest in the premises at 117 Washington Avenue North. *Id.* A164-67.

By February 24, 1992, two additional prostitution convictions had been obtained for conduct that occurred at 117 Washington Avenue North. *Id.* A171-72. The district court issued an order finding that a public nuisance existed in the building located at 117 Washington Avenue North. *Id.* A168-76. The district court found that notices of the four prostitution convictions had been mailed by the district court to the owners of the property and to interested parties and had been filed with the county recorder. *Id.* A172; see also A54-71. Magnuson does not contest the fact that she received these notices. The court permanently enjoined the defendants from operating, allowing the operation of, or leasing to others who operate Yoshiko's Sauna, or any other sauna, massage parlor, rap parlor, escort service, modeling service, outcall service, or similar business offering sexually oriented services. Pet. App. A174-76. The court also ordered that the portion of the building that contained Yoshiko's Sauna be closed for one year. *Id.* A175.

Magnuson, Fisher, and Olson appealed to the Minnesota Court of Appeals, challenging both the sufficiency of the evidence supporting the district court's decision and the constitutionality of the Public Nuisance Law. Pet. App. A177-79. The Attorney General intervened as respondent for the sole purpose of defending the constitutionality of the Public Nuisance Law. The Minnesota Court of Appeals affirmed the district court's decision. Pet. App. A180-A200. The court specifically upheld the

district court's factual determination that Yoshiko's Sauna was a single business entity and that the alternating-days arrangement of Magnuson and Kotts was simply for convenience. Pet. App. A190.

Magnuson thereafter sought review of the court of appeals' decision. By order dated September 30, 1993, the Minnesota Supreme Court denied the petition for review. Pet. App. A201-02.

REASONS FOR DENYING THE PETITION

A petition for certiorari is granted by this Court "only when there are special and important reasons therefor." Sup. Ct. R. 10.1. Review may be granted when a state court has decided a federal question in a way that conflicts with decisions of this Court or of a United States court of appeals or when a state court has decided an "important question of federal law which has not been, but should be, settled by this Court." *Id.* This case, however, does not meet these standards and, therefore, the petition should be denied.

I. THE MINNESOTA COURT OF APPEALS' DECISION UPHOLDING THE PUBLIC NUISANCE LAW IS CONSISTENT WITH DECISIONS OF THIS COURT AND WITH THE DECISION OF THE EIGHTH CIRCUIT COURT OF APPEALS UPHOLDING THE SAME LAW.

Magnuson argues that the Minnesota Court of Appeals' decision conflicts with the decisions of this Court and thus meets this Court's criteria for selecting

cases to be reviewed. However, the Minnesota Court of Appeals' decision is completely consistent with the Eighth Circuit Court of Appeals' decision in *Hvamstad v. Suhler*, 915 F.2d 1218 (1990), *aff'g* 727 F. Supp. 511 (D. Minn. 1989). The Eighth Circuit upheld the Public Nuisance Law against the very same challenges that Magnuson raised in the courts below. The Eighth Circuit, in turn, made its decision in accordance with the applicable decisions of this Court, and thus there is no reason to review the Minnesota Court of Appeals' decision.

A. The Public Nuisance Law Does Not Violate Magnuson's Right To Due Process.

Magnuson argues that the Public Nuisance Law deprives her of property without due process in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. According to Magnuson, procedural due process[1] is violated because, under the Public Nuisance Law, a building can be declared a public nuisance and closed based on two or three convictions for prostitution under circumstances where Magnuson had no opportunity to contest the validity of the underlying prostitution charges.

In *Hvamstad v. Suhler*, 727 F. Supp. 511 (D. Minn. 1989), *aff'd*, 915 F.2d 1218 (8th Cir. 1990), the federal courts have already considered and rejected precisely the

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[1] In the courts below, Magnuson alleged violations of both procedural and substantive due process. In the present petition, Magnuson does not appear to be seeking review of the Minnesota Court of Appeals' rejection of the substantive due process claim, and thus it is not addressed here.

same procedural process due claims concerning the Public Nuisance Law that have been advanced in this case. The federal district court noted that the law includes ample requirements for notice and opportunity to be heard before abatement can be ordered. The court rejected the claim that the landowner must be given the opportunity to contest the validity of the underlying prostitution convictions, stating:

> The legislature, in outlining the number of crimes necessary to automatically invoke the statute, was simply making a judgment under its police power as to what constitutes a nuisance. Such a legislative determination is subject to challenge only if no reasonably conceivable set of facts could establish a rational relationship between the statute and a legitimate end of government.

727 F. Supp. at 519 (citing *United States v. Carolene Products Co.*, 304 U.S. 144, 154 (1938)). The court correctly concluded: "The legislature could properly conclude that convictions of prostitution or gambling on property are sufficient evidence that the property has become a nuisance." *Id.* The Eighth Circuit fully concurred in the district court's analysis. 915 F.2d at 1219-20. The Minnesota Court of Appeals' analysis followed that of *Hvamstad* and came to the same conclusion, rejecting Magnuson's procedural due process claim.

The Eighth Circuit and the Minnesota Court of Appeals were clearly correct in determining that the Public Nuisance Law contains ample requirements for notice and opportunity to be heard before abatement can be required. First, it requires notice to the owner of the

property of the convictions. Minn. Stat. § 617.82, subd. 3 (1992). This gives the owner a chance to stop the illegal conduct before the abatement provisions come into play.

When an abatement action is begun, the owner gets notice and an opportunity to be heard. Minn. Stat. §§ 617.82-.83 (1992). While the statute does not provide an opportunity to challenge the validity of the convictions, the owner can challenge whether the offenses occurred on her property and within the statutory time frame. Challenging this aspect of the abatement action would give an owner the chance to contest that any particular element of the criminal offense, such as the offer to exchange sex for money, occurred on her property. Additionally, the owner can avoid a closure order by terminating the lease of a tenant responsible for the convictions or posting a bond, which in the case of an innocent owner may be set at a nominal sum. Minn. Stat. §§ 617.85 and 617.87 (1992).

As the discussion above amply demonstrates, there is no conflict between the Minnesota Court of Appeals' decision and those of this Court or the Eighth Circuit.

Magnuson asserts that the lower court's decision conflicts with this Court's recent decision in *United States v. Good Real Property*, ___ U.S. ___, 114 S. Ct. 492 (1993). However, it is clear that the procedures of the Public Nuisance Law provide exactly the kind of due process that was *not* provided in *Good*, notice and an opportunity to be heard prior to issuance of the government's order concerning the property.

In *Good*, the government, in an *ex parte* proceeding, obtained a warrant of arrest *in rem*, based on a government affidavit that Good had been convicted several years earlier of promoting a harmful drug. The government then seized Good's home without prior notice to Good or an adversary proceeding. By contrast, in this case Magnuson received notices of the prostitution convictions, which later formed the basis for the closure order, and also notice and a hearing prior to issuance of the district court's order closing Yoshiko's Sauna. Thus there is no basis for a holding that the Minnesota Court of Appeals' decision conflicts with this Court's decision in *Good*.

Magnuson also contends that the lower court's decision conflicts with other decisions of this Court and the United States courts of appeals in which findings in an earlier lawsuit were not permitted to be binding in a second action against someone who was neither a party in the first action nor in privity with a party. These cases about the application of *res judicata* and collateral estoppel are superficially persuasive, but, on closer examination they miss the mark.

There is a crucial distinction between the nuisance abatement action authorized by the Public Nuisance Law and the cases relied on by Magnuson. In the collateral estoppel cases, a *litigant* tried to impose the result from an earlier case on a litigant in a second case. Here, the *legislature* has made a public policy judgment that as a matter of substantive law the occurrence of three misdemeanor convictions for prostitution at a particular location renders that property a public nuisance.

The legislature, acting within its police power to protect the health, safety and welfare of its citizens, can determine the circumstances in which a building will be considered a public nuisance.

> [I]t is . . . clear that acts or conditions which are detrimental to the comfort and health of the community may be effectively declared a nuisance by the Legislature, and in the exercise of that power specified acts or conditions may be declared a nuisance.

State v. Chicago, M. & St. P. Ry. Co., 114 Minn. 122, 125-26, 130 N.W. 545, 546 (1911). The Minnesota Legislature did just that in Minn. Stat. §§ 617.80-.87. The legislature enacted the Public Nuisance law as part of its efforts under the police power to control the criminal activity of prostitution and gambling by striking at centers of such criminal behavior. Thus, it has declared that property on which specified numbers of criminal offenses occur is a public nuisance.

Magnuson argues that she must be given an opportunity to prove that no prostitution occurred. That, however, is not the standard selected by the legislature. Instead, the legislature decided that three convictions for prostitution committed on the property within the designated time span indicate that it is a public nuisance, or put another way, that the property has become a center for the criminal conduct that the state wants to eliminate. Magnuson has cited no case in which such a legislative determination has been struck down as violative of procedural due process.

The only case Magnuson cites that involves any kind of legislative determination is *McKinney v. Alabama*, 424

U.S. 669 (1976). There, the Court struck down an Alabama law that imposed criminal sanctions for selling material that had been declared obscene in a prior civil proceeding. A criminal defendant could be convicted even if he or she had not been a party to the civil proceeding. *McKinney* does not control here for several reasons. There, the state law was subject to stricter due process scrutiny both because it imposed criminal sanctions and because it infringed on fundamental First Amendment rights, since the factual determination made binding on the defendant was the issue of obscenity. Neither of those factors are present here. Moreover, the statute in *McKinney* did not impose a substantive legislative determination on the defendant. Rather, it applied the subjective determination of obscenity made in one court proceeding on a criminal defendant in an entirely separate court proceeding. Here, in contrast, it is the legislature's own substantive judgment that three prostitution or gambling convictions constitute adequate evidence of nuisance that justifies closing the property.[2]

Magnuson attempts to bolster her argument by characterizing the convictions that may form the basis for the

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[2] Another distinction exists between an action to close property under the Public Nuisance Law and the cases relied on by Magnuson that sought to impose criminal or civil liability on an individual. The Minnesota courts have acknowledged, in ruling that a defendant in a nuisance abatement action is not entitled to a jury trial, that the nature of the action is really an action against the property, rather than an action to penalize the owner. *State ex rel. Wilcox v. Ryder*, 126 Minn. 95, 147 N.W. 953 (1914). Thus, an abatement action under the Public Nuisance Law is basically an *in rem* proceeding.

finding of a public nuisance as factually meaningless, suggesting this would be the case in the event of convictions based on *Alford* pleas. Pet. at 20. Under *North Carolina v. Alford*, 400 U.S. 25 (1970), and *State v. Goulette*, 258 N.W.2d 758 (Minn. 1977), a defendant may constitutionally plead guilty while still denying that he or she committed the crime. Magnuson argues that the Public Nuisance Law could result in closure of property based on convictions for prostitution despite the criminal defendant's denial that the offense was committed. This argument is unavailing for several reasons.

First, it is entirely speculative. Magnuson does not even allege that any of the four convictions for prostitution at Yoshiko's Sauna were based on *Alford/Goulette* pleas. Thus, Magnuson has no standing to attack the law on this basis.

Second, it is misleading. In order to make a valid *Alford* plea, not only does a defendant have to make a knowing and intelligent waiver of her or his right to go to trial, but a judge cannot accept the plea without evidence showing a "strong factual basis" for the defendant's guilt. *See Alford*, 400 U.S. at 37-38. Under *Goulette*, the court must assure itself, through interrogation of the defendant and review of the factual basis offered, that there is sufficient evidence to support a conviction for the offense. *Goulette*, 258 Minn. at 761-62. So even in an *Alford/Goulette* plea situation, the conviction will be based, at a minimum, on a "strong factual basis" that would be sufficient for a conviction.

Third, it is irrelevant. The argument again ignores the fact that what is at issue is a legislative judgment of what

constitutes a public nuisance, not an issue of *res judicata* or collateral estoppel.

Because the Minnesota Court of Appeals' decision is in concert with the decision of the Eighth Circuit Court of Appeals and with decisions of this Court, the Petition should be denied.

B. The Public Nuisance Law Does Not Violate Any Associational Rights.

1. The State Law Regulates Criminal Conduct On Magnuson's Property, Not Magnuson's Associations.

Magnuson argues that the Minnesota Court of Appeals' decision conflicts with decisions of this Court relating to the right of freedom of association guaranteed by the First and Fourteenth Amendments to the United States Constitution. She argues that the Public Nuisance Law violates her First Amendment right to freedom of association because its enforcement can result in the closure of her business for a year through no wrongful act of her own, but based solely on the conduct of others. Magnuson asserts that this constitutes a punishment not for her own conduct but rather solely for association with others who engage in wrongful conduct. Although Magnuson does not specifically identify which of her relationships are protected by the First Amendment, one must assume it is her relationship with the women who were convicted of prostitution, since it was the wrongful conduct of these women that caused initiation of the abatement proceedings.

The Minnesota Court of Appeals' decision is entirely consistent with the decision of the Eighth Circuit in *Hvamstad v. Suhler*, 915 F.2d 1218 (8th Cir. 1990), *aff'g* 727 F. Supp. 511 (D. Minn. 1989). In *Hvamstad*, the federal courts considered and rejected precisely the same associational freedom claims concerning the Public Nuisance Law that have been asserted by Magnuson. The courts found that the Public Nuisance Law does not subject Magnuson's property to closure because of Magnuson's associations. Rather, an abatement action is authorized based on the repeated occurrence of criminal conduct on the property or, as the federal district court analyzed it, 727 F. Supp. at 518, the failure to stop the recurrence of criminal activity. As the district court stated in *Hvamstad*, *id.* at 519, with respect to the plaintiff in that case:

> The statute would penalize her not for the wrongs of her associates, but for her failure to rid her property of the nuisance.

The Eighth Circuit fully concurred in the district court's analysis. *Hvamstad*, 915 F.2d at 1219.

The Eighth Circuit and the Minnesota Court of Appeals were correct in rejecting the associational freedom challenge to the Public Nuisance Law. The law does not directly regulate Magnuson's right to association. It does not attempt in any way to tell Magnuson with whom she may or may not associate. Nor does it impose any consequences on her solely because of her association with particular individuals or groups. Accordingly, whatever effect the statute may have on Magnuson's associational rights is indirect and incidental.

The Minnesota Court of Appeals' decision is also consistent with the decisions of this Court. The Court confronted a similar issue in *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986). In *Arcara*, the Court considered a county's attempt to close a New York "adult" bookstore under a state statute allowing the government to close property used as a place for prostitution. The owners of the store contested the closure, arguing that it would violate their First Amendment rights, specifically, the right to sell books that had not been declared obscene. This Court held that the closure did not impinge on the owners' First Amendment rights. *Id.* at 706-07.

The Court reasoned that the statute directly threatened only prostitution, which had "no element" of protected expression. *Id.* at 705. The property was subject to the closure order because illegal prostitution had occurred there, not because of the sale of books. The fact that the sale of books would incidentally be affected by the closure order did not render the statute invalid. The Court explained that a party could not use a form of protected expression, selling books, as a "cloak" for unprotected activity. *Id.* The Court noted further that the burden was mitigated because the owners could sell books at another location. *Id.* at 705.

Magnuson's argument is slightly different from that made in *Arcara*. In *Arcara*, the First Amendment harm alleged was that the closure would interfere with protected bookselling in the future. Here, Magnuson argues not that the closure of a portion of the building at 117 Washington Avenue North would interfere with the future exercise of her right to association, but that she is subject to adverse action by the state because of her past

association with others. Nevertheless, the principles and the test applied in *Arcara* apply here as well.

In *Arcara*, the Court pointed out that the owners' property was subject to closure because of the prostitution that occurred there, not because of the sale of books. Similarly, here, the portion of Fisher and Olson's building housing Yoshiko's Sauna is subject to closure because prostitution occurred there, not because of Magnuson's association with the prostitutes. Magnuson can associate with convicted prostitutes all she wants; the Public Nuisance Law will nonetheless have no effect on Magnuson's property unless there are convictions for prostitution that took place on Magnuson's property. Plainly it is not Magnuson's association with prostitutes that brings the statute into play, but rather, as in *Arcara*, the repeated criminal conduct on Magnuson's property.

In *Arcara*, the Court concluded that civil, and even criminal, sanctions that may have some indirect effect on First Amendment rights are subject to rigorous First Amendment scrutiny "only [1] where it was conduct with a significant expressive element that drew the legal remedy in the first place . . . or [2] where a statute based on a non-expressive activity has the inevitable effect of singling out those engaged in expressive activity." *Id.* at 706-07.

Applying these tests to the Public Nuisance Law reveals no First Amendment violation. As in *Arcara*, here the activity that could draw the legal remedy is prostitution, not protected expression. Second, the Minnesota Public Nuisance Law does not have the "inevitable effect of singling out those engaged in expressive activity." The

law applies to *any* building in which persons have engaged in prostitution. Thus, the statute does not single out any protected activity.

Just as the owner in *Arcara* was not allowed to use its bookselling activity as a cloak to avoid the consequences of allowing illegal prostitution to take place on its property, Magnuson should not be allowed to use her claim of "association" as a cloak to avoid similar consequences for similar conduct. Thus, Magnuson's property was subject to closure not because of her associations, but because of her failure to stop recurrent prostitution on her property. *See Trade Waste Management Ass'n. Inc. v. Hughey*, 780 F.2d 221, 237 (3d Cir. 1985).

Magnuson cites a number of cases in support of her association argument. These cases, such as *Elfbrandt v. Russell*, 384 U.S. 11 (1966), involved statutes that directly punished people for belonging to particular organizations. For example, in *Elfbrandt*, the statute imposed penalties for belonging to the Communist Party or its affiliates. Similarly, in *Keyishian v. Board of Regents of the University of the State of New York*, 385 U.S. 589 (1967), the statute at issue prevented civil service appointments for members of the Communist Party. Thus, the challenged laws purported to directly regulate association *per se*. No matter where, when or how the associations took place, they would result in the adverse consequences of the law. Similarly, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), involved punishment of association *per se*. The issue was whether the defendants could be subjected to liability solely because of their association with other participants in the boycott.

Here, in contrast, the Public Nuisance Law is not directed at Magnuson's associations. As explained above, she is free to associate with prostitutes with no adverse consequences. It is only when prostitution is repeatedly committed on property over which Magnuson has an ownership or possessory interest that the Public Nuisance Law will adversely affect her. Accordingly, Magnuson's reliance on cases in which association itself was penalized is misplaced.

Thus, it is apparent that unlike the cases relied on by Magnuson, the statute here does not impose consequences as a result of Magnuson's associations, but rather as a result of repeated criminal conduct at Yoshiko's Sauna.

2. Magnuson's Employment Relationships Are Not Protected Associations.

An additional flaw in Magnuson's association argument is that the associational interest that she claims is infringed is not protected by the Constitution. In *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), this Court extensively examined the right to association. The Court observed that its decisions had referred to "freedom of association" in two "distinct senses." In the first sense, the Constitution has protected individuals in their "choices to enter into and maintain certain intimate human relationships." This kind of freedom of association is a fundamental aspect of personal liberty. *Id.* at 617-18.

On the other hand, the right to associate also protects those who join together to exercise their core First

Amendment rights, such as speech, assembly, petition for the redress of grievances, and the exercise of religion. *Id.* The Constitution protects this aspect of the freedom to associate because many of the fundamental rights guaranteed by the First Amendment cannot be exercised effectively unless individuals are allowed to band together for that purpose. Analysis of each of these two recognized aspects of the right to associate demonstrates that Magnuson's challenge to the Public Nuisance Law is meritless.

a. Magnuson's association claim does not involve protected intimate relationships.

Magnuson's associations affected by the Minnesota law are not in the first category discussed by the Court, intimate relationships. The relationships for which Magnuson claims she is being punished are presumably her relationships with the four women who were convicted of prostitution at Yoshiko's Sauna. These are precisely the types of relationships involved in *Hvamstad*, which "fall far from the familial relationship end of the intimate relationship continuun." *Hvamstad*, 727 F. Supp. at 520.

Magnuson's relationships were not of the variety that the Court has recognized as entitled to protection based on intimacy. They do not deal with the "creation and sustenance of a family marriage," *see Zablocki v. Redhail*, 434 U.S. 374, 383-86 (1978); childbirth, *Carey v. Population Services International*, 431 U.S. 678, 684-86 (1977); raising and educating children, *Smith v. Organization of Foster Families*, 431 U.S. 816, 844 (1977); or living together with one's relatives. *Moore v. East Cleveland*, 431 U.S. 494

(1977). Presumably they are simply employment relationships. They were not intimate in any sense recognized by this Court.

Moreover, Magnuson does not dispute the fact that Yoshiko's Sauna is a business enterprise. This Court has recognized the distinction between business relationships and intimate ones. As the Court said in *Roberts*, "the Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse that would not apply to regulations affecting the choice of one's fellow employees." *Id.* at 620 (comparing *Loving v. Virginia*, 388 U.S. 1 (1967), with *Railway Mail Ass'n v. Corsi*, 326 U.S. 88, 93-94 (1945)). Accordingly, courts have declined to accord business relationships the constitutional protection provided to intimate relationships. *IDK, Inc. v. County of Clark*, 836 F.2d 1185, 1193 (9th Cir. 1988); *Trade Waste Management Ass'n. Inc. v. Hughey*, 780 F.2d 221, 237 (3d Cir. 1985).

Magnuson's association with the four convicted prostitutes plainly is not entitled to the constitutional protection afforded intimate relationships.

b. Magnuson's claim does not involve expressive association protected by the First Amendment.

The Public Nuisance Law also does not implicate the second aspect of the freedom of association: the right to associate to engage in activities protected by the First Amendment, or expressive association. This aspect of the right to associate is designed to protect those who join together "in a collective effort on behalf of shared goals."

This right is "especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." *Roberts*, 468 U.S. at 622.

Indeed, the cases relied on by Magnuson involve this category of association. *E.g., NAACP v. Clairborne Hardware Co.*, 458 U.S. 886 (1982) (purpose of boycott was to express "dissatisfaction with a social structure that had denied them rights to equal treatment and respect"); *Elfbrandt v. Russell*, 384 U.S. 11 (1966) (Communist Party affiliation); *Keyishian v. Board of Regents of the Univ. of the State of New York*, 385 U.S. 589 (1967) (Communist Party affiliation); *Healy v. James*, 408 U.S. 169 (1972) (association with Students for a Democratic Society). In contrast, Magnuson does not claim that she joined together with the women who engaged in prostitution at Yoshiko's Sauna to express any views or ideology. There simply is no "collective effort on behalf of shared goals" in this case. *See Roberts*, 468 U.S. at 622. Rather, we have here only employment relationships, the purpose of which was profit for both Magnuson and her employees. Significantly, none of the cases cited by Magnuson identify as worthy of constitutional protection the kind of associations upon which she relies.

Magnuson attempts to circumvent these deficiencies in her argument by positing a distinction between cases where the law regulates associations, such as *Roberts*, and those that criminalize or punish the association itself, such as *Scales v. United States*, 367 U.S. 203 (1961) (Communist Party membership made criminal). She argues that a statute which punishes association violates the

First Amendment even if the association is neither intimate nor expressive. Pet. at 29 n.15.

This argument is based on misreading and misapplication of the cases. First, many of the cases pre-date *Roberts*, and the courts therefore did not have the benefit of this Court's intimate/expressive association analysis. See *Scales v. United States*, 367 U.S. 203 (1961); *Coates v. Cincinnati*, 402 U.S. 611 (1971); *Tyson v. New York City Housing Authority*, 369 F. Supp. 513 (S.D.N.Y. 1974); *Sawyer v. Sandstrom*, 615 F.2d 311 (5th Cir. 1980); *Fisher v. Snyder*, 346 F. Supp. 396 (D.Neb. 1972), *aff'd*, 476 F.2d 375 (8th Cir. 1973). Thus, to whatever extent these cases do imply that there were violations of the right to association without expressive or intimate characteristics, they are questionable precedent. Second, several of the cases relied on really turned on the due process requirement that *criminal* guilt must be based on personal conduct rather than that of another person. *E.G., Scales, Tyson, Sawyer.* Third, two of the cases arguably involved intimate relationships. *Wilson v. Taylor*, 733 F.2d 1539 (11th Cir. 1984) (police officer fired for dating daughter of felon); *Fisher*, (unmarried teacher fired for having male houseguests). Therefore, the cases cited by Magnuson cannot be relied on for the principle she advocates. *See IDK, Inc. v. County of Clark*, 836 F.2d 1185, 1192 (9th Cir. 1988) (distinguishing several of these cases on the same grounds).

In sum, there is no basis on which to conclude that the Minnesota Court of Appeals' decision conflicts with the decisions of this Court with respect to the freedom of association.

II. THIS CASE DOES NOT PRESENT AN IMPORTANT UNSETTLED FEDERAL QUESTION.

Because the decision of the Minnesota Court of Appeals is consistent in every way with the Eighth Circuit's decision in *Hvamstad v. Suhler*, 915 F. Supp. 511 (D. Minn. 1989), and with the relevant precedents of this Court, there is no unsettled federal question which needs to be decided by this Court. Therefore, Magnuson's petition should be denied.

CONCLUSION

For the foregoing reasons, the petition should be denied.

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Respectfully submitted,

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